Exhibit AF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ANTHONY HERNANDEZ VALADEZ, Plaintiff, vs. JOHNSON & JOHNSON; ALBERTSONS COMPANIES, INC., individually, and as successor-in-interest, parent, alter ego and equitable trustee LUCKY STORES, INC.; LUCKY STORES, INC.; SAFEWAY INC.; SAVE MART SUPERMARKETS, individually, and as successor-in-interest, parent, alter ego and equitable trustee of LUCKY STORES, INC.; TARGET CORPORATION; WALMART INC.; and FIRST DOE through ONE-HUNDREDTH DOE, Defendants.	Case No. 22CV012759 (Pages 1-114)

REMOTE VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF

DR. WILLIAM LONGO

Friday, March 3, 2023

Reported by: John Fahrenwald, CA CSR 14369, RPR

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY HERNANDEZ VALADEZ,) Case No. 22CV012759
)
Plaintiff,)
)
vs.)
)
JOHNSON & JOHNSON; ALBERTSONS)
COMPANIES, INC., individually, and)
as successor-in-interest, parent,)
alter ego and equitable trustee)
LUCKY STORES, INC.; LUCKY STORES,)
INC.; SAFEWAY INC.; SAVE MART)
SUPERMARKETS, individually, and)
as successor-in-interest, parent,)
alter ego and equitable trustee of)
LUCKY STORES, INC.; TARGET)
CORPORATION; WALMART INC.; and)
FIRST DOE through ONE-HUNDREDTH DOE,)
)
Defendants.)
_____)

Remote Videotaped Videoconference Deposition of deponent DR. WILLIAM LONGO, taken on behalf of the defendants, commencing at 10:43 a.m., Eastern Standard Time, Friday, March 3, 2023, before Reporter John Fahrenwald, Certified Shorthand Reporter for the State of California, CSR No. 14369, RPR.

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SUWANEE, GEORGIA
MARCH 3, 2023
10:43 A.M., EST

8:35:38AM VIDEOGRAPHER: We are now recording and on the record. My name is Michael Saito. I'm a legal video specialist for iDepo Reporters.

Our business address is 898 North Pacific Coast Highway, Suite 475, El Segundo, California, 90245.

8:43:18AM I'm not related to any party in this action, nor am I financially interested in the outcome in any way.

Today is March 3rd, 2023, and the time is 7:43 a.m., Pacific Time.

This is the deposition of Dr. William Longo in the

8:43:36AM matter of Anthony Hernandez Valadez, plaintiff, versus Johnson & Johnson, et al, defendants, in the Superior Court of the State of California, County of Alameda. And the Case No. is 22CV012759.

This deposition is being taken via videoconference

8:43:59AM on behalf of the defendant. The court reporter is John Fahrenwald of iDepo Reporters.

Counsel will state their appearances.

MR. DUBIN: Well, my name is Morton Dubin from King & Spalding. I represent the Johnson & Johnson-related

8:44:13AM defendants in this case.

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8:44:17AM MR. RIVAMONTE: Good morning. Ian Rivamonte of Kazan, McClain, Satterley & Greenwood for the plaintiff.

MR. CHARCHALIS: Mitchell Charchalis for defendants: Albertsons Companies, Inc., Safeway Inc., Lucky
8:44:28AM Stores, LLC, Save Mart Supermarkets, LLC, Target Corporation and Walmart Inc.

BY MR. DUBIN: Okay. So I'm going to mark Exhibit 1, the notice of deposition today, if we can just please pull that up, Mr. --

8:44:51AM THE WITNESS: Did we finish with the swearing in?

MR. DUBIN: Oh, sorry. Did we not do that?

THE WITNESS: I'd let you go ahead, but. . .

MR. DUBIN: Oh, sorry. So let's swear in the witness. I apologize. I thought we had done that.

8:45:00AM VIDEOGRAPHER: Mr. Court Reporter, can you please administer the oath?

DR. WILLIAM LONGO,
called as a witness herein, having been first duly sworn,
8:45:08AM was examined and testified as follows:

EXAMINATION

BY MR. DUBIN:

Q. Now let's start with Exhibit 1.

8:45:17AM (Exhibit No. 1 was marked for identification.)

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8:45:20AM Q. (BY MR. DUBIN:) I'm showing you the notice of your deposition today that came with a set of requests for production of documents.

Have you seen that before?

8:45:27AM **A. Yes.**

Q. Okay. And we received -- I can't remember if it was yesterday or the day before -- a variety of reports, including some reports specific to this case as well as some reports that related to your Chrysotile Standards.

8:45:49AM Are -- you're aware of that?

A. I am.

Q. Okay. And I'll mark as the next exhibit something I received this morning. That will be Exhibit 2. And it contains a series of images. It's entitled MASSG210
8:46:13AM Calidria documents.

(Exhibit No. 2 was marked for identification.)

Q. (BY MR. DUBIN:) These are also from your laboratory; is that correct?

A. Yes.

8:46:22AM Q. Do you have any understanding of why these references were not included in the initial production that we received or . . .

A. I just forgot about them.

Q. Okay. And these references are in 1560 oil?

8:46:47AM **A. Yes.**

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8:46:48AM Q. And that's the oil that you used for purposes of your analysis in the Valadez report for Johnson & Johnson?

A. Yes.

Q. Okay. And we'll come back to this later, but I
8:47:00AM just want to make sure I understand what this is. It says: SG210 Calidria chrysotile 0.05 percent.

Does that mean that this is a spiked talc sample?

A. It is.

Q. Okay. What talc was used for purposes of the
8:47:18AM spike?

A. Johnson's Baby Powder sample 13 that I purchased back in 2017. The same one we've been using for all of them.

Q. So a Chinese-sourced sample?

8:47:33AM **A. Yes.**

Q. And just so the record is clear, when we say "spiked," it means that you intentionally added some known amount of SG210 Calidria chrysotile to the baby powder for purposes of the analysis. Correct?

8:47:53AM **A. That is correct.**

Q. Do you have any references for SG210 Calidria chrysotile or any other type of Calidria chrysotile in 1560 oil that do not have talc?

A. I don't think so.

8:48:16AM Q. Okay. Well, if you want to confirm that at any

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8:48:20AM break, just let me know and we can come back to that. But if you do have them, we would request production.

So we'll come back to that in a little bit.

Let's cover a little bit of basics about where we
8:48:38AM are with your current opinions.

As I understand it, at this point, you are testifying that you hold the view to a reasonable degree of scientific certainty that everyone container of cosmetic talcum powder sourced from Italy or U.S. mines contains
8:49:00AM asbestos; is that right?

MR. RIVAMONTE: Vague and overbroad.

Q. (BY MR. DUBIN:) You can respond.

A. Sort of.

Q. Okay. I believe you testified in -- you were
8:49:16AM asked in your deposition in the Graf case whether it was your opinion that every container of cosmetic talcum powder sourced from Italy or U.S. mines contains asbestos, and your answer was "Yes."

Has that changed?

8:49:32AM **A. It's not changed, but there was an explanation along with that.**

Q. Okay. Go ahead and give me your explanation.

A. It's that if you could analyze enough of the material and get the detection limit much lower, it would be
8:49:49AM **my opinion that you would find asbestos. I think what I've**

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8:49:53AM **said, within a reasonable degree of scientific certainty, is that every mine in the world that has talc in it is going to have asbestos in it.**

Q. And, again, I'm just asking because your answer to the question: Is it your opinion that every container of cosmetic talcum powder sourced from Italy or the U.S. mines contains asbestos?

Your answer, under oath, in Graf was "Yes."

Is that still your testimony?

8:50:20AM **A. It is still my testimony if you can reduce the -- increase the detection limit to degree necessary, you will find asbestos in every container of talc.**

Q. Okay. And is it still true that you cannot name any peer-reviewed study that has ever agreed with your view that all cosmetic talcum powder in the United States and Italy contains asbestos?

8:50:40AM **A. That is true. That's no peer-reviewed paper out there that I'm aware of.**

And I'm not aware of anybody out there who has analyzed more containers of cosmetic talc from different mine sources than MAS.

Q. And is it -- is it still the case that using your current methodology, you are finding what you are calling chrysotile in a hundred percent of the bottles of cosmetic talc that you were analyzing?

8:51:12AM

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8:51:17AM **A. First off, it is not my method. It is the Colorado School of Mines' method on behalf of Johnson & Johnson who then buried that method for -- until they produced it. So I want to get that straight.**

8:51:31AM **Second is, we're finding it -- we had a recent one where there's two samples did not have it in it. But we're finding it in a high percentage of the samples.**

And for me, that's as expected.

MR. DUBIN: Okay. Move to strike the nonresponsive portion of the answer.

8:51:45AM Q. (BY MR. DUBIN:) Dr. Longo, are you also finding chrysotile routinely without using heavy density liquid separation?

A. No, we quit doing that some time ago. It really

8:52:01AM **didn't make any sense.**

And we're now finalizing the protocol for the heavy liquid density, so we're only doing heavy liquid density probably for the last year or so.

Q. Okay. Other than those two bottles that you

8:52:17AM reference -- and I'll ask you about them in a second -- are you finding what you are claiming to be chrysotile in every container of cosmetic talc that you are analyzing?

A. Well, as I just stated, we had a recent project where two of them were non-detects.

8:52:35AM Q. Right. And as I asked you: Other than those two

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8:52:36AM non-detects, are you finding chrysotile, a hundred percent of the time in cosmetic talc bottles?

A. Yeah. Eliminating the two non-detects and the non-detects before, we are finding it regularly.

8:52:49AM Q. Okay. What were you analyzing with the two non-detects?

A. I don't recall. It wasn't Johnson & Johnson.

Q. Okay. We're going to request production of any report that you prepared regarding those, those samples.

8:53:09AM Is it -- are you as I understand it, are you now offering the opinion that even using one the bottle of cosmetic talc results in exposure that is significantly above background?

MR. RIVAMONTE: Vague and overbroad.

8:53:30AM THE WITNESS: Yes, and no.

Q. (BY MR. DUBIN:) Okay. Go ahead and explain.

A. Yes. If there has been -- if we find a significant amount of material in that that or it's -- it's one of the types of cosmetic talcs that we've done lot of

8:53:46AM **testing on where we have a high percentage, that its getting exposed with one container would be significantly above background in my opinion.**

Now, it may be minimus compared to everything else and it may not have any affect on anything else, but you

8:54:05AM **can't take away the fact that this product has asbestos**

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8:54:08AM **fibers in it. And technically there is no background of asbestos, so it would be significant. Over background.**

Q. In that answer, how are you defining "significant"?

8:54:22AM **A. Significant is -- it was 0.00005. But I looked at another ATSDR document -- and I think I referenced it there -- and have changed that, I think, to four zeros and a 1.**

Q. Which ATSDR document?

8:54:51AM **A. Excuse me. As a measuring stick so that you can have something to compare it to.**

Q. And when you're making that comparison, is that number, the four zeros and a five or four zeros and a one, is that an exposure assumed to continue throughout

8:55:09AM somebody's life?

A. Well, no. I'm not -- the exposure along somebody's life would depend on any air samples that were taken by that person. You know, you just can't say, here's an exposure. I'm just using it as a measuring stick so that

8:55:29AM **I can compare one to the other, but I'm not making any assumptions that this is what's -- this is what this person's exposure is for their life.**

Like what does that mean? Like when they're in bed sleeping? And it just sounds silly to me.

8:55:45AM Q. That's what I'm asking you. Is that background

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8:55:47AM number that you're talking about, is that yardstick, a number that is representing ambient or background exposure during the course of the person's life? Is that what it is intending to represent?

8:55:59AM **A. No. It's intended to represent is, if you're going to make up -- not make up a number -- but if you're going to use an artificial background, this would be one that ATSDR published in, I think, 2000 or 2001, something like that.**

8:56:16AM Q. Well, we've talked about background before. So I'm going to move on to some more specific stuff.

Now, as I understand it, you switched PLM machines and microscopes and a camera at some point since your older Johnson & Johnson reports?

8:56:38AM **A. Yes.**

Q. Okay. And when did you do that?

A. About two years ago.

Q. Okay.

A. Or so.

8:56:45AM Q. Is the analysis that you did of the bottle in this case, the Valadez case, the only bottle that -- sorry -- the only time you've used the new PLM microscope and camera to analyze Johnson & Johnson?

A. I believe so because we really haven't

8:57:07AM **been analyzing Johnson & Johnson for a while. I can't think**

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8:57:10AM **of any Johnson & Johnsons that may have been analyzed with these new scopes.**

Q. Okay. And as we -- we'll discuss, you've changed from a 1550 oil to a 1560 oil. Correct?

8:57:27AM **A. Yes.**

Q. And why did you make that change?

A. Well, we had been criticized, I think, by Dr. Sanchez, by Segrave that we should be going through a higher refractive indices fluid to validate what we're

8:57:47AM **doing.**

And then Dr. Su's published paper came out in The Microscope and that was a recommendation in that paper that we -- well, he had like a litigation and whatever and said that if you should pick the refractive indices fluids for

8:58:12AM **the alpha and gamma for where you're ending up in; meaning, you know, if your gamma is ending up in the 1.560 to 1.567, which we're seeing a lot of, get a refractive indices fluid that's specifically in that area. So the 1.560 covers that.**

Q. And what is the effect on the colors that you are

8:58:41AM viewing if you change from a 1550 oil to a 1560 oil? And I'm not asking about specific to your analyses here. I'm asking as a general matter, what will you expect to see happen to the colors?

A. It changes the colors. I didn't know what I was

8:59:08AM **expecting to see, but it changed the colors from this**

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8:59:11AM **yellow-gold in the gamma direction, to more of a -- I would call it a reddish-gold, brownish-gold-type color. So it's essentially eliminates the yellow.**

Q. Right. Well, we can talk about it. In other

8:59:29AM words, so it will push the colors that you're seeing -- for example, shift them away from brighter yellows. It will shift it more towards the magentas or the blues as a matter of optical properties. Right?

A. I didn't say that.

8:59:46AM Q. Okay.

A. We're already in the blues most of the time on the alpha direction, if you look at most of our stuff. Alpha direction was typically in the blues.

And it shifted it from a dull yellowish-gold color

9:00:04AM **to more of a reddish-gold, but not down to magenta.**

Q. Okay. I'm not asking you about what you're finding. We're going to do that.

What I'm asking you about is the effect of changing the oil.

9:00:18AM (Simultaneous speaking.)

A. But your question seemed to suggest that it was pushing it down in the magenta and blues and it was already in the blues.

And, no, it's not pushing it all the way down to

9:00:32AM **the magenta. That's 1866b large bundles.**

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9:00:36AM **That's not going to happen with this.**

Q. We'll talk. Maybe we can do this while we're looking at something to make it easier. And let me -- I want to look at some slides. We can use them to talk about

9:00:55AM some of these issues.

But before we get there, I want to ask you a little bit about the Su affidavit. I've know you've been asked about this a bunch. It will be Exhibit 3. Let me pull that up.

9:01:09AM (Exhibit No. 3 was marked for identification.)

Q. (BY MR. DUBIN:) As a general matter with a camera, when you take an image of something, an image may or may not match what your eye is seeing. Correct?

A. Correct.

9:01:36AM Q. Okay. And with respect to your older work for Johnson & Johnson, is it your view that the images that you have provided and have shown to juries match what the analyst would see under the microscope?

A. You have to define "match." You mean like

9:02:05AM **identical?**

Q. Well, as close as possible.

A. The images we take are probably pretty close. Some of them may match, some of them may be slightly off.

Q. Okay.

9:02:23AM **A. It just depends on -- but usually what people are**

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looking at is a color copy of a copier machine. Those probably don't match.

But what I've seen is the intensity of the photographs. And what we're seeing on the screen, when I say "intensity," the brightness is typically what you see through the microscope. The colors might be slightly off, but not enough to, in my opinion, change anything that much.

Q. How about with --

MR. RIVAMONTE: Excuse me. I'm sorry.

Mr. Dubin -- Mr. Dubin, can I please have a -- can you email me a copy of this Appendix B -- or Exhibit 3, I'm sorry -- Exhibit 3 that you're showing to the witness right now?

MR. DUBIN: Yeah. Mike, can you email that to him?

MR. RIVAMONTE: Thank you.

MR. DUBIN: No problem.

Q. (BY MR. DUBIN:) So how about -- Dr. Longo, how about with the new microscope, is there any difference to you in terms of how faithfully it reproduces what the analyst is actually seeing through the microscope?

A. Well, same thing. That one gets pretty close because you can adjust the -- adjust the color lighting in lining up the apertures to get pretty close to where what you're looking in the microscope is exactly what you're seeing on the monitor. So it's better than the old system.

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Q. Okay. And so if we go forward -- I just want to ask you a question about these images on page 6 and 7.

So one of these, as I understand it, is the original illumination and one is with added illumination from a photo-editing program. Right?

A. I mean, that's what I'm assuming. You have -- did some sort of Photoshop.

Q. Okay. On the bottom image, you can obviously see a lot more particles than you can on the top. Right?

A. Correct.

Q. Would those particles have been visible under the microscope as the analyst saw it, or would they have been obscured like they are in Image A?

A. Well, see, I don't know what's happened here. The images that I believe we have under the top one, you see a lot more than what you're seeing there. I don't know what he did. I guess he's Photoshopping the bottom one, but since he won't give a deposition, there's really no way to tell exactly what sort of tomfoolery he was doing messing around with the photographs.

Q. I'm asking, though, which of these appears to be more like what you would see under your microscope if you were looking at a PLM sample of talc in your laboratory? Number A or B?

A. Both.

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Q. Well, they can't both look more like. Right?

Which one looks more like what you would see under the microscope, analyzing talc in your laboratory?

A. It just depends on --

Q. Sorry, what?

A. It just depends on the sample, what we're seeing because the conditions of the microscope, for brightness, never changes. So I don't know what Dr. Su did here. You know, we can absolutely know that, for the bottom sample, for the bottom picture, he did Photoshop. And he may have done Photoshop on the top one to reduce the brightness. I just don't know.

Q. So you think maybe A is reduced from your image? Reduced brightness?

A. It does not look like the image that I believe -- you know, I haven't looked at it in a long time, but I don't know what he did. It's hard me to sit here and make -- I can't make any testimony about Photoshopped photographs.

So, you know, get Dr. Su to give a deposition and say what he did and then I'd have some opinions here, other than I didn't know you were allowed to Photoshop photographs that you would put in a report and say, even though I wasn't there when this sample was analyzed, I was over in China, here's what I think it should have like if they turned the brightness up. It's just silly.

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Q. Well, what I'm asking you is: You've seen talc samples under the PLM microscope. Correct?

A. I've seen them under a PLM microscope, but you're asking me to give opinions on what something looks like in ours versus here in something that's been Photoshopped and no idea what Dr. Su did.

I just can't do that, and I won't.

Q. You can't tell me which of these images looks more like what you would see under a PLM microscope if you were analyzing talc in your laboratory? You can't tell me that?

A. I've already told you once, and you didn't like the answer. I said: We see both. We see ones that are like the top one, and we'll see ones like the bottom one.

What we don't see is anything that comes close to the yellow that he has on the bottom where, you know, he jerked up the brightness on his Photoshopping device.

Q. Okay. Let's go to page 8 of this. So this is, I think, what we were referring to before. It says: In this case, the rule of thumb to bring the yellow CSDS color to purple or magenta or blue range by using a merging liquid with a great RI such a 1560 or 1570.

And that's what we were referring to earlier about changing the oil to try to address the issue of chrysotile identification. Correct?

A. Yes. I've changed the oil to show that even in

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1.560, we get the exact same -- pretty much the exact same refractive indices, except the colors are different or the gamma.

Q. Right. But so I have some slides that we could call up, and we'll try to walk through those a little bit to discuss what we're referencing.

So let's call those up, and we can mark them as Exhibit 4, I guess.

(Exhibit No. 4 was marked for identification.)

Q. (BY MR. DUBIN:) And you can send a copy if you want to -- well, actually, I'm going to do them one at a time, so not yet. Let's just call Exhibit 4 -- and eventually I'll mark them all as Exhibit 4. Let's pull them up, Mike.

MR. RIVAMONTE: Mr. Dubin, if you are --

MR. DUBIN: I'll send you a hard copy of them eventually, but I'm only going to ask him about the ones that are on the screen.

Q. (BY MR. DUBIN:) All right. So just some basics. I know we all know this, but just so we have it on the record here, what are we looking at here, Dr. Longo?

A. You're looking at what it says right at the bottom, central stop dispersion staining colors for chrysotile in 1.550 RI liquid.

Q. Okay. And so this is 1550, that's what you were

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using before, but so just so we understand the process that we're all -- we're going to be going through, you have certain wavelengths of light and they correspond to various colors and that's how we can start to talk a little bit about what mineral's being identified. Right?

A. Per a particular type of -- that's right. For a particular type of RI fluid for a particular type of mineral.

Q. Okay. And alpha is perpendicular and gamma is parallel?

A. Yes, sir.

Q. Okay. Great. And I know we've -- if we go to the next slide, I know you've testified about this repeatedly so we won't go through it much.

Go to Slide 2. This is the ISO reference chrysotile showing what predominant color there?

A. Oh, this -- you know -- oh, it's got to be magenta. That's the predominant color.

But you also can see smaller structures there, like if you go to the -- a little bit off-center, down to the bottom of that bundle, guess what? You see almost a yellow-looking chrysotile. It's the size of the chrysotile bundles that affect the colors. So -- and you can see some yellow streaks through that bundle. So either it can't ever do that, or, most -- the people who are on this magenta/blue

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kick are wrong.

Q. I'm asking a different question. That magenta color, the predominant color, where would you characterize that in terms of the wavelength?

A. I would characterize that between about 520 to 550, 560, somewhere in there.

Q. 550 or 560, okay. We'll come back to that --

A. In the yellow ones, I would characterize around the -- the smaller yellow ones are characteristic of what we're seeing for the chrysotile in the cosmetic talc as well as the SG210, not -- with 1.550 it's around the 1.561 to 1.570.

Q. Let's go two more in. Actually, we probably don't need to do these.

We can go to Slide 7.

Again, just for purposes of making sure that we have the record clear, one of the things that you've said is that you're identification of chrysotile is based on the birefringence values.

A. Yes, sir.

Q. Okay. And just so we know, in general chrysotile has a lower birefringence; meaning, the colors are closer together. And talc has a higher birefringence; meaning, generally the colors parallel verses perpendicular are farther apart.

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Is that fair?

A. That's fair.

Q. Okay. Now, if we look at how this works, if you go to Slide 8 -- okay.

As your yellow in parallel gets darker, assuming that the other value remains the same -- the perpendicular value remains the same -- you're going to lower your birefringence. Correct?

A. As it gets darker -- well, that's -- you know, darker, lighter, et cetera, that's in the eye of the beholder.

But as you bring the -- the perpendicular in parallel, refractive indices closer together, the birefringence is reduced.

As you increase the distance between the two, the birefringence increases, that's -- and it would only do that with minerals that have double refraction.

Q. Okay. But, again, if the perpendicular stays the same, if I start moving in the direction of this arrow on my parallel, I will be lowering the birefringence?

A. I just said it.

Q. Is that correct? I'm trying to put it simpler.

A. We will I'd like to keep it more -- you know, you simply can go all over the place. So I've answered the question.

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9:15:49AM Q. Can you tell me if you see anything inaccurate about what this says here?

A. You know, a shade of yellow impacts one side of the birefringence.

9:16:02AM **But typically, as one starts impacting, it's not just a gamma but alpha because you're getting double diffraction. So I answered the question.**

Q. Okay, Dr. Longo.

And the next slide, we've talked about this

9:16:20AM before. You're familiar that in Dr. Su's publications, he says that yellow is the hardest CSDS color to be quantified and should be avoided at all costs. Right?

A. Yes, sir. I've seen that.

But of course you left the part out about he only

9:16:41AM **said that for amphiboles.**

Q. Okay. And the next slide.

And you've testified and acknowledged recently that Dr. Su's statement about that is not limited to amphiboles?

9:16:59AM That's correct. Right?

A. When was this one?

Q. Maybe a week or so ago.

A. Oh, that's from his report that either he wrote or Mickey Gunter. So I can't really put much stock on that,

9:17:19AM **but it was never in any of his handouts. And I don't think**

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9:17:24AM **it's in his new published paper, either. Not new. It's last year.**

MR. RIVAMONTE: Mr. Dubin, which deposition is this from?

9:17:38AM MR. DUBIN: We can send you the full deposition.

It's the Davis deposition. The cite's at the bottom.

MR. RIVAMONTE: Thank you.

THE WITNESS: So I still don't agree with the

9:17:49AM yellow portion of that. You can easily determine with yellow.

But, again, because if you have the yellow -- the yellow-gold with chrysotile, the birefringence on the fibrous talc is so much different.

8:49:12AM Q. (BY MR. DUBIN:) Okay. So can we go back to Slide A for a second? Maybe we can use this to discuss 1.560 verses 1.550.

So if I switch from a 1.550 to a 1.560 oil, what will that do -- let's assume something would otherwise be a

9:18:41AM bright yellow, maybe like around 440, which direction will it push the color in parallel? Which direction?

A. It pushes the color.

MR. RIVAMONTE: Objection. Hypothetical.

THE WITNESS: It pushes the color to longer

9:19:03AM wavelengths. So typically when in 1.560, we're seeing

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9:19:09AM things in the -- for the gamma, you know, the 480, the 5.4 -- between 460 and 500.

For the alpha, we're seeing a little bit -- not lower than the 680 -- sometimes. And a little bit pushes it

9:19:30AM to the 560. And it also has reduced the birefringence we're seeing.

We've not seen -- I don't think I can think of one for seeing anything that gets up to that low end to moderate. It's all -- it's all in the low now.

9:19:49AM So it's a better refractive indices fluid for this type of analysis for these small bundles of chrysotile.

Q. Just so we can try to make sure that it's understandable, when you go with the 1.560 instead of 155, [sic] the colors will be moving in the direction of that

9:20:09AM arrow. Correct?

MR. RIVAMONTE: Asked and answered.

THE WITNESS: Like I've already said, I don't know how many times now, it's reduced -- it's moving out of the yellow-gold more into a reddish, goldish-brown color. So it

9:20:26AM is moving towards the higher -- the higher wavelengths. However, you're using the 1.560 chart, and you're getting the exact same refractive indices.

Q. I'm just try to make -- take small bites to make it simple, and that is that it's moving in the direction of

9:20:49AM the arrow.

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9:20:50AM **A. I've already answered this.**

MR. RIVAMONTE: Asked and answered.

Q. (BY MR. DUBIN:) Yeah. You don't seem to be able to answer a simple question, though, is the problem.

9:20:58AM It's moving in the direction of the arrow, yes or no? Can you not answer that question?

A. I've already answered it. If there's a simple explanation or a simple answer, I'd give it.

But, you know, I've got whatever this -- then, you

9:21:11AM **know, this -- you have to live with this. And so I'd prefer to put it in a more of a little bit of scientific term, a scientific answer on what's going on.**

Q. Okay. Can you tell me anything that is inaccurate with the statement that by moving from 155 to 160 you are

9:21:31AM moving colors in the direction of that arrow? What is wrong about that statement, if anything?

MR. RIVAMONTE: Asked and answered. Argumentative.

THE WITNESS: I'm not answering it anymore.

8:49:12AM Q. (BY MR. DUBIN:) Okay. Now, let's move next -- we'll come back to that. Let's go to Slide 12.

So this is an image from one of your older chrysotile reports for Johnson & Johnson. I want to talk a little bit about white balancing. What is white balancing?

9:22:10AM **A. White balancing is -- make sure the whites are in**

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range -- not so much in a range -- to help the colors.

Q. Okay.

A. So I don't know the whole definition of it anymore.

Q. Okay.

A. But it seems to be the new -- I should look it up to get it exactly because it seems to be the new question for depositions.

Q. If images aren't appropriately white balanced, they can either appear too yellow or they can appear too blue. Correct?

A. I don't know. I don't know how correct -- you know, this is an older one than this is a -- you have more yellows in this because you're using a tungsten lightbulb in the microscopes and the new ones are LED, so you don't have any white balance problems.

And this wasn't really ever a problem because the conditions of these for chrysotile and the fibrous talc were the same. So it's not changing anything here when you're comparing the apples to apples versus comparing apples to oranges.

Q. So my understanding now is that you're saying that these images appear more yellow because of tungsten lighting that was used in them in the older microscope?

A. Yeah, it's like a yellow light -- not a yellow

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light, but it has yellow in it. And I think all our photographs, going back to the last, you know, 30 years were using those type of microscopes.

Q. Do you know whether the camera that you were using at that time, whether it had a feature that would allow you to white balance to compensate for that tungsten lighting?

A. Not to the degree it completely removes it. Because when you compare these to the LED photographs, you don't have the yellow like this.

Q. Okay. And when we're looking at this, for example, let's look at the parallel. You have a structure that you've identified here as chrysotile. Right?

A. Correct.

Q. Okay. And then what are these larger, rounder structures?

A. Platy talc.

Q. Okay. And platy talc, because it's not in an elongated form, however you move it, it's going to retain the same refractive index? In other words it will always -- it will stay the same color, by and large?

A. Yes.

Q. And so if we look at the next slide -- so one of the things you can do, will you agree with me, to see whether or not something is appropriately white balanced is to look at something in the image that you know -- where you

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know what color it should be. Right?

A. I guess. I mean, we're typically not taking pictures of owls, so I don't really have an opinion about your -- here one way or the other.

Q. Let me just make sure we get the point. So on the left here, you've got an owl that's slightly blue. Right?

And on the right --

A. Well, slightly blue. You've got like a blue tint to the -- to the -- to the leaves. You got a blue tint to the wood they've got the owl standing on. So you've white balanced it and you've taken this picture. I just don't recall what was done with the older Olympus with that camera on it. It may well have been white balanced. I'd just have to check on that.

Q. Well, the point is, you know, if I wanted to know: Am I looking at a picture of a real blue owl, one thing I could do is I could look and see, oh, wait am I also getting a tint on the leaves which I know should be green. Right?

A. If you're looking at white owl and that's what shows up, I guess you're correct.

Q. So if we go to the next slide -- so these are some PLM images in the same refractive index oil from Mr. Poye and Dr. Sanchez's lab. And you can see that they're a substantially different color than your old image of Johnson & Johnson. Right?

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A. They're substantially different from each other.

Q. The talc is much brighter in both these images. Right?

A. No. I mean, one is kind of grayish, and the other one's got some yellow for the talc and more whitish. So I don't -- you know, it's not the pictures we took, so I really don't have an opinion one way or the other on these.

You can get Dr. Sanchez and Mr. Poye come in and testify about what are the conditions here? Oh, that's right Mr. Poye is not a PLM person. I guess Dr. Sanchez can fill in what you're looking for.

Q. Well, why don't you tell me. If you look at talc -- just talk about talc plates -- under a PLM microscope in your laboratory, what do they look like?

A. I can't compare mine to these. These are not photographs -- I don't think I've seen before, so I really don't have an opinion, one way or the others, on these.

Q. I'm not asking about these images. I'm asking you: When you look at talc under your PLM microscope, what does it look like?

MR. RIVAMONTE: Vague and overbroad.

Q. (BY MR. DUBIN:) To your eye. Forget images now.

What does it look like to your eye?

A. Well, here's the SG210 in talc, it looks like this. At times. Other times it can look more -- where you

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9:29:05AM **have an overloaded, it can look like that. Here's another one. So just depends on the sample, what the loading is and how many particles you have.**

Q. I'm asking you, what kind of color is the talc if

9:29:24AM you look at it in your microscope with your naked eye?

A. Here's what it looks like -- my naked eye, here's what it looks like right now. This looks -- the 1.560.

In the 1.550, you got more yellows.

If you have a heavily-loaded, you might see more

9:29:47AM **like what's on the right, depending on what fluid you're using.**

If it's less loaded, I don't know if I've ever seen it -- just talc look like that in Sanchez's PLM. So, can't really compare it.

9:30:07AM Q. Let's go to the next slide, 15.

It does not -- just looking at Slide 15, your old report for Johnson & Johnson, it does not look like that. Correct?

A. Well, I wouldn't expect it to look like that or

9:30:28AM **not look like that. You know, samples are different.**

Q. Well, these are the images you gave before. This is not the color -- the talc plates, that is not the color that you would see looking through the microscope, a PLM, at talc in this oil. That's not what it would look like.

9:30:47AM Correct?

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9:30:48AM **A. That's what it has looked like, yes.**

Q. Okay. So you're telling me that with your naked eye, that's the color of talc in your -- under your PLM machine.

9:31:04AM **A. Our PLM microscope now, no. The yellows are much subdued as with yellows -- the yellow-golds in the chrysotile.**

But it doesn't change anything about the identification of chrysotile. This is all interesting

9:31:22AM **cross.**

But if you look on the left-hand side, you have 1.550 -- excuse me, the right-hand side, 1.550 to 1.560 -- you've got extension at 1.550.

And then for the gamma, you know, 67 to 70, you

9:31:45AM **got the refractive indices. I don't think what you understand is those real white areas, that's either fibrous talc or platy talc on edge. And because you have the white, you're way above -- way down in the 400-nanometer range because it's all white light in the same way. So you can**

9:32:07AM **easily compare it to show that it is not -- what we've analyzed there is not fibrous talc that has the refractive indices on it.**

Q. On the left-hand image, you can see that the structure you've identified as chrysotile is pretty much the

9:32:31AM same color at the platy talc. Right?

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9:32:36AM **A. Yes and no.**

Q. Okay. What's the "no," since the yes is obvious in the picture?

A. The "no" is that when we do these analysis, you're

9:32:47AM **looking at literally the Becke line around the outer ridge of the structure. And the other edge of the structure in the gamma is more in the reds. You don't look at the overall yellow going across it.**

And same thing on the other side.

9:33:05AM **So --**

Q. Okay.

A. You're -- you're miss -- you're not understanding on how the analysis is done. You don't look at that overall color. You go around the outer edge.

9:33:22AM Q. Okay. Do you see the outer edges of the talc plates also having what you're referring to as red?

A. You're looking at a platy structure. It's not -- and you only got one refractive indice [sic] on a flat platy. So we're not -- I don't think -- our criticism is,

9:33:44AM **is we've been misidentifying fibrous talc not that we're identifying chrysotile. We're misidentifying platy talc. So -- but the reds around the outer are a little bit different than we have on there, and it's not fibrous.**

What you need to be comparing it to is those big

9:34:06AM **white areas there. That's what happens to fibrous -- to**

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9:34:08AM **talc. A lot of times in the 1.550, it's out of the spectrum. You can't even get a refractive indice. [sic] All's you could say is, it's greater than 1.580 or 90 and it's less than 1.535.**

9:34:27AM Q. One thing we know about the idea -- looking at talc, one of the reasons that you're saying talc has a high birefringence value is because one of the colors that it shows is bright yellow. Right? That's a factor in why it would have a high birefringence value. Correct?

9:34:48AM **A. Yes.**

That's only one of the factors.

Q. Okay. But like the leaves in the picture with the owl, your platy talc is not showing that color. Right?

A. The platy talc is not fibrous and the platy talc

9:35:08AM **is not -- from straight up, it does not have two refractive indices. So -- and it literally disappears when you put it in elongation. So you're trying to -- trying to -- apples and oranges. You know, I'll reject the argument here.**

Q. Okay.

9:35:29AM **A. What you need to compare it to is those big white areas that are on -- that are in the parallel and perpendicular direction in the left and right. That's what happens with platy talc -- excuse me, the fibrous talc or talc plates on edge. We're not comparing what we're**

9:35:47AM **analyzing to a piece of platy talc. It doesn't make any**

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9:35:51AM **sense.**

Q. Talc in parallel will be the same color as a talc plait. Correct?

A. That makes no sense.

9:36:07AM MR. RIVAMONTE: Overbroad.

THE WITNESS: I don't understand the question.

Q. (BY MR. DUBIN:) You don't understand the question? Well, what would be -- how would you compare the color of talc in parallel -- elongated talc in parallel and the color

9:36:22AM of talc plates?

A. They're completely different.

Q. They're completely different colors?

A. Again, I point you back to the white areas. Or I point you to a lot of examples where we have, you know,

9:36:41AM **intergrowth between a fibrous elongated talc on one side and chrysotile on the other side. They're completely different. And we don't even look at that. They're not -- these big plates -- those plate aren't fibrous.**

You want to take the colors of what we're seeing

9:36:59AM **there and then say, well it's the same color.**

Then if you look over in elongation, are you seeing -- I mean in gamma, look how different that color is.

Q. And --

A. We've got the dark blue to extinction. Talc

9:37:20AM **doesn't do that.**

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9:37:20AM Q. We can talk about perpendicular in a second. In parallel -- you're selling me that in parallel, talc plates and an elongated talc piece will not be the same color?

MR. RIVAMONTE: Misstates testimony.

8:49:12AM Q. (BY MR. DUBIN:) Are they the same or not the same?

A. Well, which ones do you want to point to?

Q. I'm looking at one in parallel.

A. I'm looking at a whole range of colors, but I'm not seeing anything that meets the criteria for a fibrous

9:37:58AM **bundle.**

Q. I'm not --

A. So it's -- we're arguing -- we're debating over this color when it has no useful ending to it other than a talking point on your hat.

9:38:11AM **Now I've answered the question. We need to move on.**

Q. Can you tell me what the refractive index of a talc plate is?

MR. RIVAMONTE: Vague and overbroad.

9:38:28AM THE WITNESS: I would say the majority of them there, you know, are down in the 1. -- 1.5 -- maybe 1.55 -- 1.558 or something like that. I don't know. I'd have to go -- I'd need to be looking in the microscope and look at the chart.

9:39:01AM What I do know is platy talc is not fibrous, so

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9:39:06AM it's not in the equation. And what I do know, if I look over in the alpha, we don't see any blues. And if I look at what is in perpendicular on that big structure up in the left-hand corner, where I say, this is a -- this is a

9:39:30AM talc -- talc plates on edge right there or this is fibrous talc, and that's now -- in the left-hand side, that's in the alpha direction, and you can't see such a blue on the end. It's real bright.

And then on the right-hand side, now it's in the

9:39:45AM parallel direction and you still got the white. That's out of the range of all the refractive indices. I mean, you're looking at greater than 1.590.

And on the other side, you're looking, less than 1.535.

9:40:05AM Q. All right. Let's see if we can -- we'll come back to this issue in a second. Let's go to the next. Let's go to Slide 16.

Typical guidance on how this birefringence value should be calculated if we take the highest parallel,

9:40:31AM meaning the brightest color, and the lowest perpendicular. Correct? That's how birefringence in the published literature is calculated. Correct?

A. No. And no.

Q. Okay.

9:40:55AM **A. Not calculated at all. If you actually to**

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9:40:58AM **published literature -- and I don't know what published literature you're talking about -- but the ISO method has you look at a -- the Michel-Levy charts.**

You're right. You want to go to the lowest

9:41:15AM **matching wavelength and the highest, but you're not calculating anything. You're just making a general guesstimate.**

If you go to Deer, Howie and Zussman and you look at all their mineral data, every one of them will have a

9:41:32AM **range and will have a calculated birefringence just like we do it.**

If you go to the R93 in Table 2.2 and look at the references for chrysotile and look at the references for fibrous talc, you will see that they calculate the

9:41:51AM **birefringence just week we have been doing.**

But to look at the Michel-Levy charts and make a guesstimate on what the birefringence is, is not calculation, and it's not accurate for the way we're doing.

Q. So let me ask you about this testimony then. Go

9:42:08AM to Slide 18.

This is from the Prudencio trial. I asked you: But I want to make crystal clear there's no question you're using averages instead of high/low. Right? High and low.

ANSWER: "We do use an average, yes, as I've

9:42:29AM stated."

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9:42:30AM QUESTION: "In terms of that technique, you do not know of anywhere where the technique that you're using has been published or put into a scientific method. Right?"

ANSWER: "I'm not aware of any, no.

9:42:42AM Is that still correct?

A. No, it's not correct. I know maybe there's scientists out there that never look anything up and you know, you were accusing me of fraudulently making the refractive indices closer together in front of the jury.

9:43:00AM **And that it -- and of course you were completely wrong. And I went and looked it up. I went and found that Deer, Howie, and Zussman; and every one of their 3 or 4 volumes does that.**

The EPA R93 has a table and shows the

9:43:21AM **birefringence being calculated for chrysotile from .007 to .017.**

And then fibrous talc they have a birefringence calculated as .060; and for cellulose that have it at 0.050.

As a scientist when I get something like that and

9:43:48AM **I go, that doesn't sound right, and I went and look -- and I go look it up. So I'm not stuck in the past without going and seeing if you were right or wrong. You were wrong.**

Q. Let's go to the next slide, 19. I want to talk about -- a couple -- this image. This is from the old

9:44:12AM before we go on to some of the newer work.

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9:44:15AM So what color are you saying that you are observing in this image?

A. Well, if you go around the edge, you're going all the way from almost that extinction on the right-hand side.

9:44:34AM **You know, and I'm at it from here -- and then you're going down to 1.569 around the edges on the yellow side. So that's the range.**

Q. And so when you -- ultimately when you use averages here, you're treating this particle as if the color

9:44:52AM is this orange around here. Right? Like this 480?

A. Well, we have 1.569. And, you know, that's going to be around 440.

And we have 1.556 which is pretty close to the extinction line.

9:45:23AM **Around 540.**

Q. But -- so by being -- by using averages, you're treating the particle as if it's somewhere in the middle in there. Right? For purposes of your calculations?

A. Well, if you take an average of that and you take

9:45:42AM **the average of the parallel -- of the perpendicular and calculate the birefringence, it can give you, you know -- and I'm hypothetically saying 0.010.**

Or if you subtract out the gamma -- excuse me -- the alpha from the gamma and subtract out for -- it ranges.

9:46:01AM **Then you average that, you get the exact same thing.**

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9:46:08AM **And this is exactly how Deer, Howie and Zussman presents data to all the mineralogists who look at that. That's one of the premier books on crystalline structure, information.**

9:46:25AM **And I don't know how many they have in there.**

Q. Okay. But you are treating this image, this structure that you're looking at right here, as if it was the color around that line, around the 480 line. Right?

MR. RIVAMONTE: Asked and answered.

9:46:48AM THE WITNESS: I didn't say 480.

Q. (BY MR. DUBIN:) Let's see if we can do this more -- we'll do this with your new report.

A. What I said was, we go 1.569. That's at the 440 line is what I said.

9:47:02AM **And then for the 1.569 -- excuse me, the 1.556 -- you know, you're down around the 520 line -- no, I'm sorry. 1.556 is between your 540 and 560 line.**

Q. Well, we'll do this math instead with some of your newer images.

9:47:34AM Let's go to the --

THE WITNESS: Before you ask your next question, unless you're going to move onto something else, we've been going for a little bit over an hour. I'd like to take a 10-minute break.

9:47:46AM MR. DUBIN: We can take a 10-minute break.

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9:47:46AM VIDEOGRAPHER: The time is 8:47, Pacific Time. We're off the record, and this marks the end of Media I.

(Off the record at 11:47 a.m., and record resumes at 12:05 p.m., EST)

10:05:47AM VIDEOGRAPHER: The time is 9:05 a.m., Pacific Time, and we're back on the record. This marks the beginning of Media II.

Q. (BY MR. DUBIN:) Mike, can you please pull the slides back up? So let's to 23.

10:06:21AM Sorry. Let's go to 22.

I want to come back to this change in oils.

When it says here: Bring the yellow CSDS color to purple or magenta or blue range, what do you understand that to mean?

10:06:50AM **A. I understand that to be that it's rule of thumb, he says, to get the purple or magenta or blue range using 1.560 or 1.570 of normal intensity of illumination.**

So what he's suggesting is, is that you can bring it into that range by using 1.560, but it doesn't get there

10:07:18AM **unless you have -- unless you're using the chrysotile from Canada. That's not what he says in his published paper.**

Q. Okay. So unless you used the chrysotile from Canada, you're saying you won't be able to push the parallel of the chrysotile to blue.

10:07:44AM **A. In one point -- well, the -- yeah. We didn't have**

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10:07:48AM **to push it to blue range. It was already in the blue range, and with 1.560 it's still in the blue range.**

But you're not going to get it to magenta with this type of chrysotile, with either the chrysotile we're
10:08:05AM **finding in the cosmetic talc or the SG210. That doesn't get pushed to magenta either.**

And lastly, his affidavit, I didn't think it was an affidavit -- I don't think -- where he swore to anything. I think it's just a report. Maybe you call it an affidavit,
10:08:25AM **but I thought you had to say that you're saying this under oath.**

But in his published paper from last year, he acknowledges that chrysotile from different sources will have a higher refractive indice [sic] than what is found the
10:08:45AM **1866b standard.**

Q. You said you were already getting blues from what you're calling chrysotile, but in parallel, you were typically getting yellows. Right?

A. Yellow-gold, yes, sir, that is correct. That's
10:09:05AM **what we were getting.**

Q. And so the point that he is saying here is to increase the -- from instead of using a 155 to use somewhere in 1560 to 1570, until you turn those yellows into the blue range or purple or magenta. Right?

10:09:28AM **A. Well, the yellow is only -- the yellow-gold is**

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10:09:32AM **only seen in the gamma discretion. You don't see the -- I would say, nine times out of ten, it's in some blue range already for the alpha.**

But what I'm curious about is we have this
10:09:46AM **affidavit, but then we have his peer-reviewed published paper that doesn't say this. It says the opposite.**

Q. Okay. All I'm asking you, again, is the idea would be to change the oil to move that parallel from yellow into being in the blue range. Right? To help you
10:10:13AM distinguish where the, you know, where that's really falling for the particle?

A. I mean, you read it correctly. But it's not -- it's not what he put in his published paper. So how am I supposed to answer that, other than: You read it correctly?

10:10:35AM Q. What are you saying --

A. It's not right. It's not -- at least when he puts it out to his peers, other than to his roommate in college, it's not what he says in the published paper. So I don't know what you want me to say here.

10:10:51AM Q. Let me make sure I understand. What are you saying is in his published paper that is inconsistent with this?

A. He doesn't say anything like this. He says to use 1.560 to have it in the range of the refractive indices that
10:11:07AM **you're seeing. But he says in his published paper that**

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10:11:13AM **there are other sources of chrysotile that give you higher refractive indices in the gamma range than what the 1866b is. And he says, use 1.560 for the gamma range because it's more in tune with the refractive indices you're seeing.**

10:11:34AM **And that's what we did.**

Q. Okay. And the point being that if you use a -- the oil that is more in tune with your -- what you are reporting as your refractive indices, then you would start to observe blue.

10:11:55AM **A. You're not going to -- I mean, again, you read it correctly. But that's not what he's saying in that paper, which is a paper that says to use these ranges.**

And the only thing he said about changing the 1.560 is that, as a rule of thumb -- this is a different
10:12:23AM **rule of thumb now, is to have the fluid that you're using in the ranges you're seeing.**

The now for the gamma -- excuse me -- for the alpha we're already seeing the blues and that's -- and the 1.550 works fine there.

10:12:44AM **The 1.560 -- also when he has a 1.560 chart that he specifically says, use these charts for quick evaluation for rapid identification of the types of asbestos you're analyzing.**

Q. Now let's go to the next slide. So here we're
10:13:18AM looking at an image from one of your older reports. Now

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10:13:25AM this is identifying talc, but then let me look -- let's look at the next slide, and then we can compare them.

A. So we got 1.595.

Q. Okay. So this --

10:13:37AM **A. Well, that's -- that's saying 1.560. So you'll get --**

Q. Right.

A. -- these colors.

Q. Okay. Now, I just want to -- this is a
10:13:45AM representative image from your analysis of this more recent bottle. And now we're in 1560. Right?

A. Correct.

Q. Okay. Next slide.

So if 1560 pushes colors towards the orange, away
10:14:16AM from the brighter yellows, I assume it relates to what you said before. Why is it that your new images are brighter than your old images?

A. Well, you realize that the one on the left-hand side, we're looking at talc?

10:14:37AM **The one on the right-hand side, we're looking at chrysotile.**

Q. Okay. Why is it brighter?

First of all, this is not the background here. This is a bottle of Johnson & Johnson. Right? That you're
10:14:54AM analyzing.

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10:14:55AM **A. Is that the one we just did?**

Q. This is -- yeah, from the Valadez report. That's a Valadez, Johnson & Johnson.

A. You're using a completely different microscope.

10:15:06AM Q. Okay.

A. -- with an LED lighting. That is the bright white area. And this is the old microscope. They're going to look different.

Q. Okay. So does the one on the right look more true

10:15:19AM to what the eye would see under the microscope than the one on the left?

A. The one on the left is what the eye would see. The one on the right is what the eye would see on your brightness level. You know, you're looking at a

10:15:44AM **state-of-art LED different objective -- different dispersion staining-type lens. It's the infinity-type, so you can't really compare them. If you're trying to compare them as the exact same color, you can't do that. Or the brightness --**

10:16:05AM **But we have -- and, you know, I guess we'll get to it. I've produced samples where we have half chrysotile and half fibrous talc with the same microscope on the left-hand side and you're getting similar types of brightness, but you can clearly see -- same background, but you can clearly see**

10:16:33AM **how the talc -- fibrous talc side is way brighter than**

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10:16:39AM **different refractive indices than you see on the chrysotile side. So what you're trying to compare makes no sense.**

Q. We'll talk more about these images in a second. So we're looking here at a structure that you've identified

10:16:56AM as chrysotile. Right? With the arrows.

A. Yes.

Q. Okay. And then these more rounded structures around it, are those talc plates?

A. Well, you have talc plates, and you have something

10:17:17AM **else in there. Maybe aluminum silicates or some silica, but the -- the other, the blues.**

And then you have talc particles in there.

Q. Okay. So let me make sure I understand. The blues, you think, are -- some material is neither talc

10:17:39AM nor asbestos. Right?

A. Well, some of them may be asbestos. It's just too small to -- for us to resolve, especially the ones that are in the perpendicular directions, blue.

And then you have some particulates that are, you

10:18:01AM **know -- fragments of something. I don't know what it is. We don't analyze and try to determine everything that's in these samples. Could be silica, or it could be something else. I don't know.**

Q. You can get blue on a -- even on a talc plate

10:18:17AM depending on how it's oriented. Right?

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10:18:21AM **A. Not on a talc plate, no, because it doesn't change. Talc plate only -- you're going into the B directions, which is the top flat direction. And no matter which way you turn it, you're going to pretty much get**

10:18:40AM **similar stuff.**

Q. Have you seen the video of Dr. Sanchez flipping a talc plate?

A. Flipping it how?

The answer is, no, I haven't seen it.

10:18:50AM Q. Yeah, okay.

But anyway, so, for example, if we look at some of these yellow -- like if I travel with my eye up from the particle you have identified as chrysotile up towards my left and up, there's like a -- you know, is that talc, that

10:19:12AM yellow piece?

A. Don't know.

Q. Okay.

A. Could be. Probably.

Q. Okay. How does that structure that you've

10:19:26AM identified as chrysotile look any different than -- in that orientation, look any different than those talc plates?

A. Looks completely different to me. It doesn't have the morphology. You know, you have to understand, this is Step 1 out of 5 steps of different orientation, elongation,

10:19:54AM **cross polars, no polars.**

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10:19:57AM **No decision is made that that a chrysotile bundle until we get through the whole thing. We can't just pick one photograph and say, how's it different from here? How's it different from here. You know, if we go -- look through**

10:20:12AM **all the photographs, which would be how you probably identify chrysotile, you can start -- you can see all the difference with that.**

But you're just asking, how is that different?

You know, I can't -- let me see here.

10:20:34AM **Let me get that. What's that number?**

Q. Page 33.

A. If you go to the parallel direction and look at those same particles, you can see a big difference. If you go to elongation, most of those -- that's a 630. Under

10:21:21AM **elongation, talc plates pretty much disappear.**

Then if you go to cross-polars you can see the fibrous structure.

So it's -- if I can look through this and see how -- it is chrysotile versus a talc plate.

10:21:56AM Q. Explain to me how you think that's chrysotile and not talc.

A. If you go to the next photograph in the perpendicular direction, you can see the striations through it. It's almost purplish-blue. It's just about at its

10:22:21AM **extinction limit, and there's -- I can see that out of a lot**

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10:22:24AM **of these other ones which are too small to really resolve.**

Then and I go to the elongation photograph, I can see that there's a talc plate. I can see that it has fibrous structure. And if I go to cross-polars, I can see

10:22:46AM **the fibrous nature of it.**

So it's chrysotile. It's not a talc plate. We're not misidentifying -- we're not misidentifying this as fibrous talc, and we're not misidentifying talc plates for chrysotile.

10:23:03AM Q. What in the images in the elongation would be different that we're seeing here versus what you're calling fibrous talc? What are we seeing here that we could not see with what you're calling fibrous talc?

A. Well, again, we're not just -- first, I thought we

10:23:28AM **were comparing them to talc plates.**

Q. Okay. I'm just asking --

A. Well, if we go back to the dispersion staining, the -- the refractive indices is 1.564. In the -- in the parallel, it is 1.561 in the perpendicular. The reason it's

10:23:55AM **not fibrous talc because you got a refractive indice of 0.003, where the fibrous talc is going to have a refractive indice that is completely different.**

For example, if you go over to the right slightly, there's a white spot there. I don't know what that is. And

10:24:24AM **if I were to go a couple -- maybe 5 millimeters to the right**

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10:24:29AM **and straight up, you see a very yellow-looking structure. And I can see structures in that.**

And then if I go to the parallel, I can see this brightish -- bright white and a bright blue. That's fibrous

10:24:49AM **talc.**

And tell me, if you can absolutely see the difference there.

Q. Okay. Talc in perpendicular can also be blue. Right?

10:25:11AM **A. Fibrous talc in the perpendicular can be blue.**

But if you compare -- if you go to the perpendicular photograph, which would be the next one where I said, that's talc. And look at it in the perpendicular -- it's not quite on perpendicular -- it's bright -- light,

10:25:31AM **bright blue to white. So that white puts it less than 1.535.**

Q. So what is the structure to the right of the one that you've identified, the larger blocky structure with blue on the side? What is that it? Looks like it's mostly

10:25:53AM in perpendicular.

A. I just have to get oriented here, so give me a second.

MR. RIVAMONTE: Mr. Dubin, I just want to clarify. The image that we're currently looking at now is page 32 of

10:26:44AM Dr. Longo's report, the parallel dispersion?

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10:26:49AM MR. DUBIN: On the right, yeah.

MR. RIVAMONTE: Okay. Yeah.

MR. DUBIN: I'm not sure if it has page numbers or we just counted pages.

10:27:07AM MR. RIVAMONTE: I'm just looking at the PDF, whatever the PDF says. It's page 32.

Q. (BY MR. DUBIN:) Sorry, Doctor, I wasn't sure if you were in the middle of --

A. Yeah, I heard it. I'm just looking at it. It's

10:27:20AM **hard to say, what is that? What is that?**

I mean I'd have to be looking in the microscope at it to tell you what that is. It's not something we identified. So I don't know what's wrong with it, but I'd have to be looking in the PLM scope to make a guess.

10:27:37AM Q. Based on morphology, does that to appear to be a talc plate?

A. Again, I'd have to be looking in the microscope to make any decision on what that might be.

Q. And is that generally true? In order to properly

10:27:54AM judge what colors were observed on here, you would have to be at the microscope and actually look at the slide?

A. It's not so much the colors. It's the focus. It's -- you know, I would look at elongation, at lower magnification. So got kind of an oddball structure to it to

10:28:22AM **be chrysotile. I don't -- doesn't really have substantially**

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10:28:34AM **parallel sides.**

So I can't really tell you anything else than what's in the middle there because we have parallel sides. I see the striations, you know, all the way through it. It

10:28:51AM **has the appropriate refractive indices. So it's --**

I would have to do more to that other particle in order to say, that's chrysotile. I don't see the striations through it like I do the other one. It's -- I can't tell you without doing more work.

10:29:14AM Q. Do you still have the PLM slides for this analysis?

A. We still do.

Q. Okay. I'm going to request that you preserve those and we're going to request an opportunity to review

10:29:27AM them, so we can -- we'll follow up about that, but I am requesting that you not dispose of them.

The -- let's go -- so what in this oil, in 1560, what should you be seeing for chrysotile for the kind of chrysotile that you say is in cosmetic talc? What should

10:29:50AM you be seeing, colors?

A. What you're seeing right there.

Q. Okay.

A. So a range, looks like everything. But we're seeing the same sort of refractive indices. This one is

10:30:04AM **1.564. I would say 90 of what we find for chrysotile in**

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10:30:11AM **cosmetic talc is in the 1.560 to the 1.569 range.**

And if you were to average it out, it's about 1.566 or so. That what's we see, the primary in elongation.

Q. Not generally bright yellow. Right?

10:30:31AM **A. Not at 1.560.**

And it wouldn't call it bright. I would just call it a yellowish-gold.

Q. Okay. And with respect to what all these blue things are, the percentage of chrysotile that you say you

10:30:46AM identified in these products is down around .003 to .006 percent. Right?

A. Well, what we saw here was 0.002 to 0.004. When it was weight corrected, I think it was like .000 -- let me just look at the report. I don't want to put something

10:31:20AM **on the record that's not . . . Okay. 0.0003 to 0.0006 percent.**

Q. At those percentages, is it fair to say that in this field, most of the material is not going to be chrysotile?

10:32:06AM **A. I think we have found something to agree on, Mr. Dubin.**

Q. Okay. So talk to me for a second about your Calidria reference SU210 in 1560. But first, let me just ask you: Was --

10:32:39AM Well, actually, I'll get to that later. Let's

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10:32:42AM just do this first.

So I've got an image here. If we go to the next from what I've received in morning. And -- so we understand again, this is what you're using as your reference from

10:33:06AM Calidria chrysotile in 1560 oil, the same oil that you're using for the Valadez bottles. Right?

A. Oh, you're pulling it up. Okay. I couldn't figure out -- where did that come from?

Q. Yeah, page 21.

10:33:26AM **A. Yes, that's what we're using.**

Q. And so this is structure, in this Calidria reference, that you've identified as being chrysotile. Correct?

A. Yes, sir. It is chrysotile.

10:33:39AM Q. Okay. So, as we point out, there's also talc in this reference sample. Right?

A. Yes.

Q. Okay. Is that bright yellow?

A. No. I would say that's sort of a goldish-brown --

10:33:54AM **a goldish area. It's not bright yellow at all.**

Q. Okay. Is this the color that you are -- is this color in your view in parallel inconsistent with talc?

A. Oh, totally.

Q. Is it the same color that you're seeing on the

10:34:19AM talc plates?

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10:34:21AM **A. Oh, the talc plates?**

Q. Yeah. Are you seeing that same yellow on the talc plates?

A. I don't think that's the same color.

10:34:29AM Q. You don't think that that yellow is the same color that you're seeing in the talc plates near it?

A. I'm sorry. Could you repeat that?

Q. You don't think that yellow is the same color as the talc plates that you're seeing in this image?

10:34:43AM **A. No. I don't.**

Q. In fact, it's brighter looking than some of the talc plates?

A. I would say it's a different shade.

Q. Okay. Well, let's see what shade you did call it.

10:34:56AM So you give a value of 1570. Right?

A. That's right.

Q. Okay. And we can go forward one slide, and we'll come back.

So the way we do this -- I mean, your lab is at

10:35:18AM what temperature? About 22, you said?

A. 21 degrees centigrade.

Q. 21. Okay. So we would look 1570, 21 degrees, 1560 oil, and it gives us a value of 500. Right?

A. Yes. That's -- I guess, that's the old Su tables,

10:35:48AM **but 1.570 ought to be about 500.**

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10:35:52AM Q. Okay. Now let's go back one slide, back to 26. And so 500, the color that we should be observing is the one underneath the 500. Right?

A. It should be close to that.

10:36:07AM Q. Are you honestly telling me that when you look at this image, that structure is that magenta color underneath 500?

A. Well, no.

MR. RIVAMONTE: Argumentative.

10:36:22AM THE WITNESS: I'm not saying that. That magenta color under 500 -- ours is more in the 1.572 -- you know, if these are -- if he's correct. I got to go back to his tables, and we're using the tables he has in his publication. And I'd be looking at -- let me take look at

10:36:49AM that.

Oh, I'm looking at the chrysotile. No wonder. Need to be looking at the talc that we analyzed. Where is that? You're looking at the standard. No wonder. There it is.

10:38:57AM No, we have sort of that at the 500 mark. Again, I'd have to be under the microscope to look at it, but the outer edge, I think that was averaged. But I think that's what you're using is from one of his older Su tables maybe. But I don't have a problem with -- the whole thing is not

10:39:27AM looking this magenta -- redder-ish [sic] purple.

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10:39:30AM But on the outer edge, on the top of the structure it has where the Becke line is. So I'm not concerned with that.

Q. Can you see anything -- again, see this little 10:39:39AM particle, this yellow particle, the talc plate in between these blue structures to the right of what you've mark off? See those talc plates?

A. I do.

Q. Is there some difference that you're -- you're 10:39:57AM seeing there that causes you to call this magenta and --

A. No, I'm not saying the whole thing is magenta. What we're doing now is we're averaging them. It's hard to see where you haven't blown it up.

But on the top edge, we have a little bit 10:40:19AM different color there. So I'd have to go and look at -- and see if this was averaged out on it. Because at least on my photograph, I can see on that top edge where the Becke line is.

Q. Okay. Let's go forward to more slides. 10:40:42AM To that one, yeah.

So again, what we've -- we've already talking about this. Let's go one more. Okay.

What color are you seeing here in this structure that you've identified as chrysotile?

10:41:12AM **A. Is this the new one?**

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10:41:15AM Q. Yep. That's the same structure we were looking at before.

A. I'm going to --

Q. Sure.

10:41:22AM **A. -- look at my photograph.**

Q. Look at your photograph.

A. It looks like almost a purple around the Becke lines.

Q. Okay. So first, let me make sure I'm 10:41:57AM understanding. The structures above it, so, say, for example, to the left of the top of the arrows, that's a talc plate. Right?

A. Yep.

Q. Okay. And so you're telling me that the structure 10:42:12AM that we're looking at here, you would characterize that as purple, the one that you're calling chrysotile?

A. I'm not talking about the structure. I'm talking about the very outside of the bundle where you're supposed to be determining you're refractive indices.

I'm not talking about the whole structure. I'm 10:42:32AM talking about where you make the call on this as -- as discussed in Dr. Su's published paper.

Q. Okay. Just so we're clear here, the 1564 is the refractive indices that you give for this. And so 1564, 10:42:59AM that's structure should be purple. Right?

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10:43:05AM **A. Purple, purplish-red.**

Q. Okay?

A. That's what I'm seeing on the outer edge, not the whole structure.

10:43:13AM Q. Okay. So is it -- you're understanding then that this chrysotile, it's going to be all yellow -- and it's going to be yellow and then some faint line of purple on the outside or something like that? That's what you're seeing here?

10:43:38AM **A. What are you -- I'm not sure what you're talking about. I see no yellow on that chrysotile structure. What I'm looking at is the outer edge of the bundle.**

Q. Uh-huh. Okay. So let's keep going. But you're treating this -- for purposes of your birefringence 10:44:00AM calculation, you're treating this -- the number that goes into your calculation is associated with purple?

A. Now, that's what it looks like to me, sitting here. Again, you know, I'd have to be sitting at the PLM scope, but I can see a reddish-purple around the edge, what 10:44:22AM I'm looking at right now.

Q. You can't see -- because, again -- because of the illumination, you can't see that also -- a little bit of an edge around the talc plate up there?

A. What I see around that talc plate is reds and 10:44:38AM **yellows.**

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10:44:39AM Q. Okay. So you would characterize the talc plate as red and yellow, red on the outside?

A. Looking at the bottom of it, it's sort of a darker red. And then you also see areas that are yellow, and then 10:44:54AM **you have some areas on the very backside.**

Q. So talc -- sorry.

A. I don't see any structures inside that talc plate.

Q. But you're saying --

(Simultaneous speaking.)

10:45:11AM **A. -- different color, a different -- different colors than what we're looking at, at the chrysotile bundle.**

Q. But you're saying a talc plate can also have that sort of reddish outside in those images. Right?

A. Well, what I'm saying is, it's different than what 10:45:29AM **you're pointing to.**

Q. But it can have like what you're seeing as a reddish outline in these images, the talc plate?

A. Well, what is see is yellow, a little bit of red area, I see a little bit of blue area, and then I see in the 10:45:47AM **very front -- well, that's in the parallel -- perpin- --**

Then I see a little bit of red, but I don't see the shade of the reddish-purple that I see around the chrysotile one. Again, I'm not looking through the microscope, but trying to answer your question.

10:46:03AM Q. Yeah. So let's go ahead a little bit. We can

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10:46:06AM skip to the -- let's to 30 for a second.

The next one.

So the number you're assigning to that structure that we looked at before in parallel is actually even more

10:46:32AM dark purple than the ISO reference chrysotiles. Right?

A. Well, you've got all kinds of colors there. You've got bright yellow, you've got some blues in there, you've got some magenta. And of course, we're in 1.550, here. I don't believe this is 1.560, so you can't compare

10:47:07AM **the two.**

Q. I know, but just in terms of the visual color where it goes on the wavelength. On the wavelength, you're saying that that structure in Johnson & Johnson is are more purple than this?

10:47:23AM **A. That's not purple.**

Q. Okay. Well, you're saying it's farther towards the purple range than this. Correct?

A. Well, you can't compare the colors. This is in 1.550. We're looking at 1.560.

10:47:40AM Q. What I'm asking you is: The colors are associated with wavelengths. Right? In both circumstances. Right?

A. They're associated with wavelengths, but the 1.560 changes that wavelength even though you will get the same refractive indices because you have to look at a 1.560. I'm

10:48:05AM **not -- you can't -- you can't look at this in 1.560 and then**

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10:48:11AM **try to compare -- 1.550 and try to compare to 1.560.**

Q. I'm just talking about the color, the color itself. Right? The color of this is -- you're saying visually whatever oil it's in, that the structure we just

10:48:31AM looked at from the Johnson & Johnson is further towards purple than this. Right?

MR. RIVAMONTE: Asked and answered.

THE WITNESS: You can't compare the two.

And, yes, it's a darker reddish-purple than, you

10:48:52AM know, this magenta color eliminating the bright yellow colors and ignoring the size of structure under that, that is probably closer -- is more closer to the size ranges we're seeing.

So, yeah. You just can't compare the two. I told

10:49:12AM you my opinion about it and what was around the edge, and I'm not looking in a microscope. I can't answer it anymore and help you out here.

Q. Just so we're clear what I'm asking about, I'm comparing the color of this to -- go back a couple of

10:49:28AM slides, please -- and this. These are the two ones I was asking you about. Right?

A. That's so misleading, Mr. Dubin.

Q. Well --

A. You're talking about the whole structure. I'm

10:49:42AM **talking about right around the Becke line of a structure**

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10:49:46AM **that is maybe 1 thousandths of a size of what we're looking at over there and looking at it in a completely different refractive indice [sic] fluid. So, yeah. You can do what you want here, but I'm not agreeing -- I'm not saying you**

10:50:02AM **can compare the two at all. It's not the structure that we're dealing with here.**

Q. Okay. Let's go to Slide 33. And so here you're reporting this and including it in your calculations as 1568. Right? So magenta. Right?

10:50:45AM **A. We're saying the 1.568 due to what's around the outer edge of that bundle.**

Q. For purposes of your calculation that you're using this to determine this being chrysotile, you're treating this as magenta. Right?

10:51:02AM **A. I'm treating it somewhere -- you can't really do it like that. I'm treating it somewhere in there, and I need to check out --**

I need to check the table you're using.

But I can see here, looking at it on the outer

10:51:17AM **edge, it's pretty -- pretty close between the two. They're 1.572 to 1.573 to the 1.569 to the 1. -- the 1.567 to 1.568 verses the 1.69. [sic]**

You're only -- you got a few-thousandths of a refractive indice here. You know, looking at a very small

10:51:46AM **structure and I'm just on the outer edge.**

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10:51:47AM **So you are trying to compare to the 1866b standard in huge bundle. You just can't do that.**

Q. I thought you told me before you saw a little red sometimes on the outside of talc plate. So how is that

10:52:03AM any different than what you're seeing here?

A. It's completely different. I didn't say it was the same thing. And I don't see any talc plates in this one that even comes close.

Q. Why are the talc plates so dark here? Why can't I

10:52:22AM see the other talc structures, as well as this one?

A. It's a different area of the sample.

Q. What causes things to be obscured like that?

MR. RIVAMONTE: Misstates testimony. Vague and overbroad.

10:52:52AM THE WITNESS: You're just seeing a more -- you're seeing more of a concentrated area on the sample. If I look at individual structures of talc plates versus -- it's less concentrated of talc particles.

Q. (BY MR. DUBIN:) I don't understand. How is -- but

10:53:09AM then why can't I see the talc particles that are on here clearly. Why can't I see --

For example, why are the ones, down and to the left, so dark?

A. If I look through -- if I look through the one

10:53:31AM **that you say is so much better and I look through this one,**

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10:53:36AM **I can find some of the top plates are just like that.**

And also I can find a lot of top plates that are not -- are just like the others. You're looking -- you're looking down through a glass slide onto a sample that is 10:53:50AM **basically just particulates -- in with the -- in with the fluid, you're going to have different heights.**

And the only thing that they're focusing in on to make sure that it's absolutely in focus is the structure we're looking at. You know, you're point of view -- even -- 10:54:15AM **and we're also using a -- using the --**

The central stop objective lens is also one of these infinity lenses, which gives you a broader -- where you're going to see more structure. And this could be up and you can have other particles down on the glass slide. 10:54:35AM **This is common in polarized light microscopy where, if this was somewhere else and I wanted to not focus on what's important but focus on one of these other particles like over here, you know, there's more of these particle that are in the same plain view with the central stop lens -- that's** 10:54:56AM **the infinity type. This is common.**

Q. Okay. Have you reviewed -- received or reviewed Dr. Gunter's supplemental report about the optical properties of Calidria 210 and 144 chrysotile, as compared to Gold Bond elongated talc?

10:55:24AM **A. Yes.**

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10:55:25AM **Well, I don't know if I reviewed the report. I reviewed his deposition where he said it was yellow-gold.**

Q. Well, I just want to make sure you --

Let me look at one image from that. We'll make it 10:55:39AM the next exhibit in order.

(Exhibit 7 was subsequently marked for identification.)

Q. (BY MR. DUBIN:) So this is -- trying to exemplify this 155 versus -- he is using 1565 instead of 1560, just so 10:56:00AM we make sure we understand the concept here.

So you can see that the top image is in 1552, and then the bottom image is in 1565.

And the point is that if you -- when you raise the refractive indices of the oil, now you will see chrysotile 10:56:26AM as blue in parallel. Right? Is that a correct summary of this?

A. Correct.

MR. RIVAMONTE: Vague and overbroad.

Q. (BY MR. DUBIN:) I'm sorry, what? "Correct"?

10:56:41AM **A. So it's initially in what? 1.552?**

Q. Right.

A. And now it's 1.565, okay.

Q. And --

A. The point is what?

10:56:54AM Q. The chrysotile has turned to be blue in parallel?

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10:57:01AM **A. Yes.**

Q. Okay. When you analyzed -- when you've analyzed Johnson & Johnson product in the 1560 liquid, did you see any chrysotile structures that -- any structures that you're 10:57:26AM calling chrysotile that were blue in parallel?

A. No.

Of course that's 1.565, not 1.560.

Q. Have you done -- how did you decide to pick 1560 if Dr. Su's statement was that you should pick something between -- in the range of 1560 to 1570? How did you decide 10:57:57AM on 1560?

A. Because the 1.560 is in the range that we're seeing.

Two, what I noticed here, he hasn't given us any 10:58:21AM **refractive indices because there's no chart for 1.565.**

So we picked 1.560 because that's what Su said to do in his published paper, that we should use 1.550, slash, 1.560 in his chart -- his wavelength charts -- where refractive indices stops at 1.560.

10:58:48AM MR. DUBIN: Okay.

All right. We can take down the slide set.

So I'm going to change topics now and hopefully speed along a little bit.

But I don't know whether you want to take another 10:59:03AM break, whether you need anything to eat, or something like

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10:59:06AM that.

THE WITNESS: Yeah. It's about 1:00. I do need lunch.

MR. DUBIN: Okay. Let's go off the --

10:59:09AM (Simultaneous speaking.)

THE WITNESS: -- go till 5:00 p.m. today. I don't know if you're going to need all that time or not.

MR. DUBIN: Let's go off the record, and we can discuss how long to take for lunch.

10:59:19AM VIDEOGRAPHER: The time is 9:59 a.m., Pacific Time, and we're off the record.

This marks the end of Media II.

(Off the record at 12:59 p.m., and record resumes at 1:49 p.m., EST)

11:49:04AM VIDEOGRAPHER: The time is 10:49 a.m., Pacific Time, and we're back on the record. This marks the beginning of Media III.

MR. DUBIN: Before I do anything else, I just want to clean up the exhibits.

11:49:18AM So Exhibit 1 will be the notice.

Exhibit 2 will be the Calidria SG210 references in 1560 oil.

Exhibit 3 is the Su affidavit.

Exhibit 4 will be the slides that I displayed.

11:49:33AM Exhibit 5 will be the Valadez report.

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(Exhibit No. 5 was marked for identification.)
MR. DUBIN: Exhibit 6 will be the older Chinese Johnson & Johnson -- Chinese-sourced Johnson & Johnson report that I displayed some images from.
(Exhibit No. 6 was marked for identification.)
MR. DUBIN: Exhibit 7 will be the Gunter supplemental report that I displayed a page from.
(Exhibit No. 7 was marked for identification.)
MR. DUBIN: Exhibit 8 will be Dr. Su's article determining asbestos refraction indices by dispersion staining.
(Exhibit No. 8 was marked for identification.)
Q. (BY MR. DUBIN:) And so I want to go to the report in this case, which I guess I've just said is Exhibit 5, and ask you a little bit about that.
MR. DUBIN: If we could call that up, Mike?
First, if we could page through to the bench sheet.
Q. (BY MR. DUBIN:) So ultimately when you're under here, optical data for asbestos identification, there's an alpha and a gamma value 650 and 510.
What does that represent?
A. That represents the range of the -- on the alpha on the -- on the high side to the -- I mean, you know, it gives the outside range between the two of the -- I think it

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was either four or five representative structures -- yeah, four representative structures. So we give it a range of the alpha and gamma. And if you look down -- so for alpha, that's -- that's the highest wavelength.
And for the gamma, that would be the lowest wavelength -- or the shortest wavelength, not the lowest.
Q. So, for example, 510 in parallel would be a shade of magenta?
A. 510?
Q. Yeah.
A. 1.568. I think we've already gone over that. But that is, which one? 1.568, 1.568, 1.568, 1.568.
Yeah, 1.568. You know, I can see a kind of reddish color around the outside, but we spent some time talking about that.
Q. Right. I'm just trying -- confirming the color.
And 650 in a perpendicular would be a blue?
A. Let's see where one is. 650, I just need to find it.
Yes, it's blue.
Q. Is 650 in perpendicular also consistent with talc fiber?
A. 650 in perpendicular?
No. It would be a -- it would be -- the wavelength would be higher than that.

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Q. What would you expect --
A. A bright blue. Around 7, 750 or so.
Q. Okay. And what would you expect for the parallel for talc?
A. Well, if you go to the very last pages of the report, this fibrous talc has a sample. And we're seeing parallel ranges from greater than 1.595 to greater than 1.600. I think those are the highest.
And on the flip side, we have less than 1.550 for the alpha. So it was less than 1.550.
Q. Okay. Can we then go a little bit further to the image after it?
And now one of the things we were discussing and I want to make sure that I understand, were Becke lines. Can you explain to me what a Becke line is?
A. The Becke line is the interface, essentially, between the fluid and the bundle.
Q. Mm-hmm.
A. And it's not so much a Becke line in that it is the -- I just call it that because the Becke line, if you change the focus either moves out away from the particle or moves in or is right on it. So I've been calling it a Becke line, but it's really the very first dispersion through the crystal on the outside that doesn't have to go through all the rest of the crystal to see the color.

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Q. Because when we were discussing these images and you were talking about Becke lines, you can't observe Becke lines on these types of images. Correct?
A. I mean, that's correct.
I was just using it as an example of where you look, but no these are not technically Becke lines. That was poor choice of words on my part.
Q. Okay. So some of the images that you have in this report are the type of images -- whether it's in the correct orientation or not -- are the type images in which you could try to observe a Becke line. Right?
A. No. It's not a Becke line because a Becke line is not in the structure as this is. This is the first outer edge of the bundle that is causing a dispersion of light.
Q. So I'm not talking about this image. I'm saying there are other images.
Let's scroll down through the report a little bit. Maybe there's a better example.
So I don't know whether you this is even in the correct view to observe a Becke line or not. But how do these kind of images relate to Becke lines?
A. Well, the only really way to tell is from the focal plane where it's in focus. You're either -- out of focus or in one direction or out of focus in another direction and if it's a true Becke line, it will move. It

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will move into the structure, or it will move out of the structure.

Or it will stay at a particular -- and you will know if you got the right refractive indice fluid for a matching. So you have to -- it's a way to look at unknowns.

You know, you put 1.550, zero in and it moves away, I believe that is -- means -- and I always forget -- it's either too high or too low to -- and what you're looking for is a fluid that you don't get movement.

Q. Okay. And just for --

A. So it matches what the wavelength -- what the matching wavelength.

Q. Just for reference, we're looking at M71614-001CSM-002.

So are there any images in here where we can determine the colors that we're seeing in the Becke line and translate those into wavelengths of light? Or do we not have images to be able to do that?

A. You know, maybe. You don't really have the image there. But the one that's parallel -- I don't know if you could really do that or not. We don't do Becke line work here, so it's not something I do all the time or would do.

I wouldn't use Becke lines to identify a particulate that's unknown. I would start off with SEM or something.

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Q. Okay. So you wouldn't be able to tell me, for example, if this were a Becke line, what wavelength of light that -- what color -- what wavelength of light that's associated with?

A. No. In order for me to do that, I would have to be sitting at the microscope, in focus, out of focus, and look at that.

So, no, that's not something I can just do from looking at this picture. At least I can't.

Q. So then for purposes of understanding your testimony when you were talking about Becke lines before, you just mean the edge of the image and the dispersion standing?

A. Correct. I should have been more careful about how I was phrasing.

Q. Okay. And in -- when we were talking earlier about the tungsten lighting that was on the old microscope, is it fair to say that in all of the old depositions where we've talked about your chrysotile findings in Johnson & Johnson, when you were speaking about the images depicting gold colors or orange colors, that was with a microscope that was using tungsten lighting that was adding yellow to the image?

A. Yeah, could be.

But the interesting thing is the refractive

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indices we were finding during that time period are just about dead-on to the same ones we're finding now with 1.550 with the new microscopes and also the 1.560.

So it wasn't adding it to the point that caused any misidentification. In also the fibrous talc because clearly the birefringence refractive indices were spread much further apart. So it didn't affect any of the analysis.

But it that yellowish color that I've been told comes from the tungsten filament, and which you don't have with the LEDs.

Q. Well, again, a lot of other things go into the refractive index -- a lot of other things go into that birefringence calculation and the refractive index, in other words, what color you're calling and the like. Right?

Forget it. I think we both know. Let's move on.

So let me back up for a second.

What, if anything, do you know about the bottle -- the source of the bottle that you tested in -- for the Valadez case?

It's not a bottle that he's actually used.

Is that fair to say?

A. No. It's not at all. I'm just getting to the chain of custody so I can tell you exactly.

There's a correspondence that came along with the

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bottle.

Q. Okay.

A. It's in Section II -- in Section II, that -- from Joseph Satterley. And he said he purchased this Johnson baby powder bottle on September 20th, 2022 near Mr. Valadez's home in Merced. Am I saying that correctly? California.

And then I have a receipt from the Marriott Courtyard from their market sundries department, I guess.

And it was $3.19.

So that's what I know about it. It was an off-- I guess because of the packaging, it must have been a -- must have been a typical Marriott or one of these -- where you pull it off.

And I also know that the sample was sealed; meaning, when you take the top off there was a Johnson & Johnson seal over where the holes are.

MR. DUBIN: Mike, can we pull up the two images, the photographs of the bottles that the plaintiff's mother provided? We'll mark those as the next two exhibits in order.

So this will be Exhibit 9, and the other one will be Exhibit 10. Can we just pull the other one also, so we can look at them in quick succession. Let's mark the other one, Mike?

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Mike, are you there? I see your mouse.

(Exhibit No. 9 was marked for identification.)

(Exhibit No. 10 was marked for identification.)

Q. (BY MR. DUBIN:) While he's pulling that other one up, I guess we can talk about this one.

Do you see a bottle of Johnson's Baby Powder in the back there?

A. I do.

Q. You've looked at a lot of Johnson & Johnson bottles by now. Correct?

A. I guess I have.

Q. From looking at this, do you have any idea what period of time this bottle is from? If it's helpful, I have your declaration with the bottle images if you want me to call that up.

A. It is pretty close to the -- there's a 1978 one, I think. I'm looking for the one that -- there we go -- pretty close to a 1978. It doesn't have the pink stripe across the top. And if I'm looking at the photographs from a 1978 -- and let me just keep going forward. Let's see if we have some others.

Also, matches ones from the -- these are all NDL ones. Pretty good matches with, you know, 1984.

And just to keep looking -- I'm still looking. I don't have pictures of anything past the 4 and the 5. It

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looks like in that genre what I see here because of the straight shoulders and no pink across the top.

Q. It look like what genre? I'm sorry.

A. Mid '80s, into the '90s. And I don't have a 2000. I don't have about '95 on, but it matches everything going up to about -- at least the pictures I have -- 1995.

Q. And then --

A. Let me see something else here. Hold on. I would say some time in the 90s, early 2000s. I don't have examplars from that, the '98, '97, '99.

Q. How about let's look at the next exhibit, Exhibit 10. It's harder to see this, I guess.

A. That's in the -- because of that rounded shoulder -- again, it's hard for me to see. I'm just looking at the top, the way it rounds off.

I would say that is sometime in the 2014s, 2015s. At least according -- you know, I'm looking at some of the client samples on how that rounded shoulder is, at the top.

And does look like -- I just wish I could see that top better. Let me see if I've got a picture I could see that's not blown up like that.

Q. Okay.

A. Now just because of the rounded shoulders, I would say that's a newer bottle than the last one.

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Q. I'll just mark as the next exhibit, the declaration that you have prepared that has a number of images of bottles just so it's attached here.

(Exhibit No. 11 was marked for identification.)

Q. (BY MR. DUBIN:) But we don't have to talk about it further right now.

Okay. The Calidria reference -- the other Calidria reference materials that you provided, I assume you have electronic copies of those images. I think we got scanned copies. But do you have electronic copies?

A. Yes.

Q. Okay. So we'll request those and follow up about it. I see -- try to -- I assume that you still have not identified any chrysotile in any Johnson & Johnson products by transmission electron microscopy; is that correct?

A. (No audible response.)

Q. And you did transmission electron microscopy also with respect to the Valadez bottle that you received. Right?

A. Yes.

Q. And did you do both with and without heavy density liquid separation or just with?

A. Just with for amphiboles, 2.85.

Q. Okay. And, you know, one of the things I think you've already mentioned is that number of defense experts,

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such as Dr. Gunter or Dr. Sanchez, have questioned your identification of chrysotile.

Why haven't you tried to identify chrysotile by TEM in response to that to prove that your identification is correct?

A. It is correct. I mean, the first thing is, there's no requirement to do TEM.

We have validated a few samples by SEM we're still working on to maximize the -- the harvest of the chrysotile.

And it's come to my conclusion that the defense experts are in fact misidentifying chrysotile for fibrous talc, especially Mickey Gunter.

Q. Could you take one of the particles that you've identified as chrysotile from the PLM slide, crush it up, put it on a TEM grid, and verify what mineral it is?

MR. RIVAMONTE: Improper hypothetical.

THE WITNESS: Because we're dealing with such small structures the answer is no. We'll get there, Mr. Dubin, we're just taking it -- you understand we're not in a research lab.

Q. I --

A. We don't -- hold on. I don't get grants that we can do this full-time. You know, it took the Colorado School of Mines -- a big university, it was full-time -- took them a year to work out their heavy -- their double

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12:16:58PM **density heavy liquid separation. So we have validated by SEM, the PLM.**

And Sanchez and Gunter are just wrong, especially Gunter since he misidentified Calidria 210 in 1.550 that was 12:17:19PM **suspended in a matrix of bentonite clay. He called it fibrous talc.**

And he also said that if he showed me a thousand of these, it would be the same answer.

Q. Again, so I want to make sure I understand your 12:17:36PM statement. So if you identify the particle on PLM, you can take this particle off with tweezers. Right?

A. You cannot remove a particle that small.

I know R.J. Lee has this technique of doing it to put it on an SEM stub.

12:18:00PM **So if you're dealing at a microscopic level, to pull it out -- the coverslip off -- extract it with a very thin tungsten needle and then put it on -- they put it on an SEM stub and they dropped some alcohol of it or acetone to remove the fluid.**

12:18:23PM **But what they do that with, is -- are a much larger particles than what we're dealing with here.**

Q. Okay. Well, what size particle do you think it would need to be in order for you to do that?

A. Oh, about the size range I've seen for amphiboles, 12:18:41PM **50 microns, 100 microns.**

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12:18:46PM Q. Okay.

A. These are averaging about 10 microns in length and about 2 microns wide.

Q. Can you -- you also have an exposure report here 12:19:04PM for Mr. Valadez?

A. Oh, yeah.

Q. So I believe there's a total weight of talc you have determined that was applied to them.

A. Well, yes. But there's also a caveat in there 12:19:29PM **that when you get the report in the timeframe that it was supposed to be, you know, given to you guys, the mother had not been deposed yet.**

And so when I did the calculations, I made some assumptions, such as, you know, typically potty-training is 12:19:54PM **two and a half years. The boys are three. So I used two and a half years as the timeframe that Evan was in diapers -- not Evan, excuse me -- Anthony, jeez.**

When I talked to Ian this morning because she was just deposed yesterday, and she testified that it was 1.5 12:20:18PM **years.**

And so that's one year too long.

And I also made the assumption that when Anthony was bathed, he was bathed once day. I understand she testified to two times a day. So --

12:20:33PM **And I put all that in the report, that I -- that I**

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12:20:45PM **reserve the right if I have to go back and change the -- do the calculations over if the testimony was not the same as my assumptions.**

Q. Do you have any calculations, as we're sitting 12:20:58PM here today?

A. No, I only talked to Ian this morning with about 30 minutes to go before the deposition. So it won't take long.

Q. Okay. Switching gears a little bit. You are 12:21:19PM aware that Johnson & Johnson, part of its testing program since the 1970s has included TEM work. Correct?

A. I have -- I am aware of that.

Q. And I know now you've been involved in cases that have included a number of other manufacturers of 12:21:47PM talc-containing products. Correct?

A. Correct.

Q. As you sit here today, are you aware of any other company besides Johnson & Johnson -- that had TEM testing as part of its regular testing program?

12:22:12PM **A. Pfizer did a lot of their own testing. Cyprus did a lot of their own testing until they were no longer involved.**

To the extent that Johnson & Johnson tested all the way and still testing, I'm not aware of any other 12:22:35PM **companies did it to that degree.**

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12:22:41PM **But it was to actually find out if asbestos is present, all that TEM testing that was done in all the non-detects was clearly a waste of money.**

Q. And Amorous was a talc -- a seller of raw talc?

12:23:04PM **A. It was.**

Q. Okay. And Pfizer, was that in connection with Pfizer products or a sale of talc?

A. Both Cyprus and Pfizer were selling talc, as well as using it in sales in some products.

12:23:21PM Q. How about product manufacturers? Is there any product manufacturers other Johnson & Johnson that you know who had TEM as part of their routine testing?

A. I don't know any other manufacturer that did the amount of TEM work that Johnson & Johnson did. That, to me, 12:23:42PM **was a methodology designed specifically not to find asbestos. Since Johnson & Johnson absolutely knew that they had a method developed that was too sensitive for their detection limits and went with the typical dilution method --**

12:24:03PM **So one the hand, no. I don't know any other companies maybe did many analysis. I know either, it's Cyprus or Pfizer -- maybe Cyprus analyzed over 2,000 samples by TEM from Montana and Italy.**

I think the got those right.

12:24:23PM **So maybe -- and they were finding asbestos. They**

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have done more -- I don't know how many that Johnson & Johnson has done, but I don't think it's north of 2,000 or even close to 2,000.

MR. DUBIN: Okay. Let me take -- let's take a 10-minute break. I'm going to review my notes and see if I've got anything I need to do.

THE WITNESS: Okay, great. Thank you.

VIDEOGRAPHER: The time is 11:24 a.m., Pacific Time, and we're off the record.

This marks the end of Media III.

(Off the record at 2:24 p.m., and record resumes at 2:38 p.m., EST)

VIDEOGRAPHER: The time is 1:18 a.m., Pacific Time, and we're back on the record.

This marks the beginning of Media IV.

THE WITNESS: Mr. Dubin?

MR. DUBIN: Yep.

THE WITNESS: I went through and did the -- recalculated based on the mother's deposition and it's only 11 pounds more than the 2019. So 240 pounds.

Q. (BY MR. DUBIN:) Was MAS NAV ever accredited for asbestos testing in 2001?

A. In 2001?

Q. Yeah.

A. I believe so.

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Q. Do you -- are you aware of whether that accreditation involved participating in bulk proficiency testing?

A. Ever since we became a member, we were, yes.

Q. Does MAS have records related to those accreditations?

A. All the way back then? I don't know how far it goes.

I thought when you guys did your foyer and got all the records that you got everything you needed.

Q. Okay. Do you recall if any of this bulk proficiency tested involved Calidria?

A. I've seen that, and I've never checked to see if we were part of that or not.

Q. All right. We'll request any materials that you have about that. We'll follow up with a request for it.

And on that subject, we've been talking a lot about SG210 or RG144 and that those are different grades of what's called -- sometimes called Calidria asbestos. Correct?

A. Correct.

Q. And that was a trade name for asbestos sold by a company called Union Carbide. Right?

A. Correct.

Q. And it was mined from the New Idria Serpentine

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deposits in California. Correct?

A. Correct.

Q. And it's a unique geologic -- that mine is unique geological feature, in other words what's called short fiber chrysotile asbestos. Right?

A. Yes.

Q. And there are certain -- without getting into it, there are certain geological features that are believed to have resulted in that asbestos type, including obviously there's a lot of tectonic activity in that region.

Is that right?

A. I don't know what the geological features are that caused the formation of the Calidria or the Coalinga chrysotile versus, say, Canada.

Q. That's fine.

A. It definitely has a different characteristic, if you're not looking at it in a product. It literally looks like talcum powder.

Q. Right. I mean, in fact I think that the people who discovered that deposit originally thought it was a talc deposit. Right?

A. That, I don't know.

Q. My question is: When you say that the chrysotile in cosmetic talcum powder is similar to the Calidria chrysotile, is that at all related to geological conditions,

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or are you saying only that it's the milling process that makes that occur?

A. When I say, it's relative, it's related to -- I'm talking about the refractive indices.

Q. Right.

A. The refractive indices are very close in 1.550 to what we're finding in the amount of 1.560, the same thing. And the Calidria, morphologically, is very different than Canadian chrysotile, but the chemistry is not that different. So I'm trying to determine what gives it a completely different set of refractive indices much higher in the gamma direction in 1.550 than Canadian or Black Lake chrysotile. And the only difference is the size.

Q. Right. Well, for example, do you have any reason to believe that the unique geological features that produced Calidria asbestos in California exist also in all the talc mines in which you're finding chrysotile?

A. I doubt that if you're going to have tectonic movement.

The one thing that makes it all the same is that -- is the size. It's been milled. You know, you don't find really long -- you don't find this long bundles. And we -- you know, we're seeing things on the order of 10-microns in length on average.

And then same is -- now the 144 is of a much

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12:44:24PM **bigger size. You have to look around for the smaller stuff.**

But the 210, they're all showing up about the same length that you're seeing in cosmetic talcs.

Q. So, again, just trying to figure out. You're not saying that the unique geological features that produce Calidria exist in these talc mines, you're just saying that the milling process turns into a similar size; is that correct? Or is there something else to it?

A. No. My hypothesis is that the only real difference that something that would be the same across the board, is the size of the 210 that's obviously been milled compared the 144.

You know, the 144, I think the average length for -- hold on -- I'll tell you what the average length is for the 144 if we're looking for the small stuff.

That's not it.

The average bundle size for the RG144 is for -- you know, again, not a big population -- 1, 2, 3, 4, 5, 6, 7, 8 with 74 microns.

The SG210, average length was -- you know, 15 measurements was 10.5.

The average length of the chrysotile in the Gold Bond is 10.5. So what is causing the difference? It can't be geological. If you look at the EDS spectras, it has about the same chemistry. There's nothing weird in

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there. And of course the diffraction patterns are the same.

But the only one factor is, it's been milled.

Q. And when -- when did you do the SG210 in 1560? When did you do that? When was that?

A. That was back in -- according to the -- it looks like it was some time in this January.

Q. Okay. And --

A. Started the 1560 before that, but then we now have to go back through looking at all the standards so that we have a robust -- but we do have analysis of the SG210 in two different matrices, bentonite and calcium carbonate, which eliminates the talc.

Q. And those are in 1550?

A. Those are all in 1550.

I want to go back now and do it in 1560.

Q. Okay. And in terms of SG210 or Calidria, how different is that, if at all, from Canadian shorts, like grade 7?

A. Canadian shorts, grade 7 is still a lot of big stuff. And you're going to get -- you get the same thing. It's big stuff.

The chrysotile needs -- and it's almost impossible to sieve. So, you know, future work. Maybe -- maybe take 7m and liquid nitrogen freeze it and mill it. Have it pass through a 200-mesh grid, and then see what it does.

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Q. Do you intend to do any work analyzing talc or Calidria at 1565 or 1570?

A. No. You know, we'll think about 1565 where we're actually using refractive indice [sic] fluid versus a heating stage.

MR. DUBIN: Those are my questions for today. I'll pass so that we can get you done.

Thanks, Dr. Longo.

THE WITNESS: Oh, thank you, Mr. Dubin.

Always a pleasure to see you.

MR. CHARCHALIS: And, Dr. Longo, are you fine if I just get into it, or do you need a quick two minutes?

THE WITNESS: No, go ahead.

MR. CHARCHALIS: All right. Thank you.

EXAMINATION

BY MR. CHARCHALIS:

Q. So, as you know, I represent the retailers in this litigation so you know what my questions will be focused on.

A. You know what my answers are going to be. I can adopt all the other answers about that and skip it.

Q. In your calculations specific for this case, none of your exposure calculations -- well, withdrawn.

In your calculations for this case, none of them were specific to the retailers. Correct?

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A. Correct.

Q. And after you obtained some additional information from Mr. Rivamonte this morning regarding the mother's deposition, you don't intend to perform any calculations specific to the retailers. Correct?

A. That is correct. I am not.

Q. And I'm just going to -- as a brief hypothetical -- represent to you that in her dep testimony yesterday, Mr. Valadez's mother stated that she was unable to estimate how many containers of Johnson's Baby Powder she purchased from any individual retailer on average in a year. She was unable to estimate which retailer she purchased the most of the product from.

And so based upon those, assuming that is correct -- that I'm representing her testimony correctly to you -- you will not be performing any calculation specific to the retailers. Correct?

A. I will not try to assign any amount of containers to any particular retailer.

Q. Okay.

MR. RIVAMONTE: Just a belated objection. Objection to the extent it misstates testimony. And improper hypothetical.

MR. CHARCHALIS: That's fine. And any other objections, I'll stipulate if it's brought up throughout the

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case, that if it's belated, it's timely.

Q. (BY MR. CHARCHALIS:) Okay. So I have here -- let me share my screen. I'll do this as quick as possible -- from one of your --

Do you see a document that says: Mass chart of J & J, at the top? September 16th, 2021.

A. Yes.

Q. Is that -- I went through the documents you produced. To me, this appeared to be the most recent one.

Is this the most recent chart?

A. It is. It was updated September 16th, 2021.

And this container that I analyzed, is probably the first Johnson & Johnson container that we've analyzed in a couple years. I mean, ever since bankruptcy.

Q. And so that's leading to my next question. The only container that would not be in this chart is the one you recently tested, that you have opened thus far in this case. Correct?

A. Correct.

MR. CHARCHALIS: Could we go off the record for one second?

VIDEOGRAPHER: Okay. The time is 11:52 a.m. Pacific Time, and we're off the record.

This marks the end of Media IV.

(Off the record at 2:52 p.m., and record resumes

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at 2:53 p.m., EST)

VIDEOGRAPHER: Time is 11:53 a.m., Pacific Time, and we are back on the record.

This marks the beginning of Media V.

MR. CHARCHALIS: All right. Thank you for that.

Q. (BY MR. CHARCHALIS:) So turning to what is -- going down, you see 18 here?

Sorry, not that one.

A. 18. I have my own, so I can follow along.

Q. You have your own? All right. So I'm on -- I'm in the table titled, Table II, Containers from outside J & J archive post and at Container 18.

Are you there?

A. I am.

Q. Okay. So for source there, it says: Retailer CVS, Rite Aid and Albertsons and from the client, Linda Zimmerman.

That information that is from CVS, Rite Aid or Albertsons, that was from another attorney. Correct?

A. Well, yes. It was from her deposition.

Q. Okay. And so --

A. This is where I bought them at.

Q. And this is -- and I believe and we've talked about it before, so I'm not going to try -- I'm going to try and not belabor it, but I just want to make sure I'm

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correct.

Was this one of the sections that she input the -- the attorney input the information into the chart for you?

A. Yes. I asked her to do that so I wouldn't have to go back and look through all the depositions.

Q. And so you didn't review the deposition to determine whether it was CVS, Rite Aid or Albertsons?

A. No. She didn't know where they came from.

Q. Okay.

A. No, I did read the depositions because I was in all those cases.

But things like MAS, you know: Retailer, Publix, that's where I bought it. So anything that says "MAS," is I filled it.

Q. Okay. And so for this one, the plaintiff who provided the container did not know if it was from -- actually from Albertsons, they just said it could have been from CVS, Rite Aid or Albertsons. Correct?

A. Right. It's this is where she purchased her containers.

And I just put them in there. But I don't have any opinions about any of the retailers. You know, knowledge of who knew what, when; should they have worn it, that's not my area. It doesn't matter what retailer it comes from, to me, I'm just analyzing the product.

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Q. And I appreciate that. That will help expedite things. But I have to ask a few more followups on these.

So just to be clear, there's no container that you purchased from Albertsons. Correct?

A. Correct. We don't have an Albertsons here.

Q. And are there any containers where you identify the source as only Albertsons, that you tested?

A. Not that I'm aware of.

Q. Okay. I'll represent that this is --

A. Possibly in here, but I don't think there is one from Albertsons.

Q. Okay. I'll represent I reviewed the chart and this 18 in Table II was the only one that references Albertsons, I believe. It's my understanding that the plaintiff testified, the CVS, Rite Aid or Albertsons. So we can move on from Albertsons.

So now next going to 26 in this table. So 26 -- are you there?

A. Yeah.

Q. So this is Container ID M71211-001. And these were from Holly Johnson, the source. And I'm going to --

A. You still at the top of II?

Q. I believe I am let me just doublecheck.

A. Well, I mean, here's Table I.

Q. Yep. Table II.

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12:57:41PM **A. Table II. I just must have been in the wrong place, which -- surprising to me. Okay, I've got it now.**

Q. Okay. So the sources in 26 and 27 is off the shelf from client Holly Johnson, and it says: Retailer, 12:58:01PM Walmart.com. Do you see that?

A. Retailer No. 20?

Q. 26 and 27?

A. Oh, 26. Yes, it says Walmart.

Q. Walmart.com. Correct?

12:58:12PM **A. Correct.**

Q. Okay. And so I'm correct that Ms. Holly Johnson purchased this offline. She didn't actually get this from the shelf in a Walmart. Correct?

A. That is correct.

12:58:27PM Q. And isn't it correct that this was from a third-party seller that was selling products using the Walmart website?

Is that correct?

A. That, I don't know unless that's in the chain of 12:58:40PM **custody.**

Q. Okay. So if the receipts indicate that, you would have no reason to dispute it, if any of the documents indicate that?

A. That's correct. I have no reason to dispute it.

12:58:50PM Q. Okay. But you would agree that these containers

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12:58:53PM were not purchased from within a physical Walmart store. Correct?

A. I would agree.

Q. Okay. And now, going down to 32 and 33. So 12:59:04PM that's M71211-007 and -008. These are, again, Holly Johnson. It says off the shelf, but you would agree that those are not off the physical shelf in a Walmart. Correct?

A. Oh, I would agree. It wasn't intended to say off the -- out of a physical shelf that somebody bought it.

12:59:28PM **It's just sort of a -- that it was purchased from a retailer off-the-shelf-type thing.**

Q. And, again, you have -- if this was sold by a third party seller shipped directly to Ms. Johnson by that third party, it would never have been in the possession of 12:59:51PM Walmart. Correct?

A. I'm not sure what that means.

MR. DUBIN: Objection -- the law.

THE WITNESS: If this came off the internet, it wouldn't have been in a Walmart store.

1:00:08PM MR. RIVAMONTE: Objection. Misstates California law.

(Simultaneous speaking.)

THE WITNESS: -- do you want to come pick it up at the store? Or do you want to have delivered?

1:00:20PM So I don't have enough information to say which

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1:00:22PM that is, but it wasn't really matter to me.

I think, well, obviously, it matters to you more.

Q. (BY MR. CHARCHALIS:) Okay. And so do you recall reviewing the -- well, withdrawn.

1:00:37PM You would have no reason to dispute any of the records --

MR. RIVAMONTE: I'm sorry, Mr. Charchalis, I have to respond really quick to your response to my objection.

Just for the record, I want to refer

1:00:49PM Mr. Charchalis to Bolger vs. Amazon.com, where a court of appeals held that a website can be held liable under certain products liability, even though it's a third-party seller.

That's why I'm stating: Objection, misstates California law.

1:01:06PM MR. CHARCHALIS: And, again, I haven't stated anything about the law. I asked if it was in their physical possession. I did not ask anything about legal chain of distribution or potential liability.

But thank you.

1:01:16PM THE WITNESS: I was just going to say that. Not.

Q. (BY MR. CHARCHALIS:) So you would have no reason to dispute if the records from the Holly Johnson matter, in the chain of custody, indicate that these documents were purchased from a third-party seller. Correct?

1:01:37PM **A. If there's documents that show that, I don't see**

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1:01:40PM **why I would have -- if there's actually documents that show that, I don't see any reason why I would dispute that.**

Q. Okay. I'll move along. Thank you.

25, it says off-the-shelf retailer Target. And it 1:02:01PM was sent by Humphrey, Farrington & McClain.

Do you know who purchased it off the shelf in Target?

A. Yes. Steve Craig from Humphrey, Farrington & McClain. They're not involved in talcum powder, and 1:02:20PM **sometime back then I was talking -- we were talking because I work on other stuff for him. He's a plaintiff's attorney.**

He said: Yeah, I think my wife just bought a big container.

I said -- I asked him, said: Would you mind 1:02:28PM **sending it to me? Has it been opened up? So . . .**

Q. So this purchase had no relation to any litigation?

A. Nothing to do -- this law firm does not do any cosmetic talc litigation.

1:02:53PM Q. Were there any other individuals that you asked, outside of the scope of litigation, to send you containers of baby powder that you became aware they purchased?

A. Yes.

Q. And who?

1:03:08PM **A. Nothing to do with this case. There's not been**

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1:03:16PM **any analysis I'm relying on. This was a home purchase from different areas around the world, and MAS is paying for the analysis.**

Q. Well, that wasn't done on any consulting basis. Correct? Litigation --

1:03:31PM **A. No. It's my own curiosity of the containers bought in different countries.**

Q. Okay. And so the containers bought in different countries that you're testing on your own for your own curiosity, have you concluded the testing of any of those containers?

1:03:49PM **A. No, of course not. They've been sitting here for a while.**

Q. You haven't done testing on any of those containers that you've collected?

1:04:01PM **A. Well, I can't say I have or I haven't. I haven't issued any reports on them. It's not in the context of litigation at all.**

And until I'm done with them all and put a report together, I can't really -- I -- I -- it's confidential to us, so I'd prefer not to talk about it.

1:04:19PM Q. What is the basis for it being confidential to you, if it's not in the context of any litigation?

A. Well, it's for our own research.

1:04:35PM MR. RIVAMONTE: Objection. Argumentive.

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1:04:39PM THE WITNESS: It's not ready to be talked about or start getting subpoenas about it. And I can't even confirm or deny we've tested any of them yet.

Q. (BY MR. CHARCHALIS:) And how would confirming or denying whether you've tested any of it disclose any confidential results or information?

1:04:51PM MR. RIVAMONTE: Objection. Argumentative.

Counsel, Dr. Longo is not relying on any of those tests, if any were conducted, for the purposes of this case. So this line of questioning is argumentative and harassing.

1:05:08PM THE WITNESS: I mean, I'm not attorney so I'm just saying it's not anything I am relying on in any of the litigation of any cosmetic talcs. I can neither confirm or testimony that we've tested them. I prefer not to talk about it.

1:05:32PM Q. (BY MR. CHARCHALIS:) I understand you may prefer not to talk about it, but if you're conducting testing on a product that is the same product, which is Johnson's Baby Powder that's at issue in this litigation and it's not subject to any consulting privilege, which some of the other testing is whether or not you are comfortable testifying about it, doesn't mean that we can't ask you questions about it so --

1:05:46PM THE WITNESS: I understand your position, you understand my position. You will have to go to a judge.

1:06:00PM

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1:06:03PM Q. (BY MR. CHARCHALIS:) okay. And that's fine. I just want to make clear -- I'm just going to ask one more time, then I'm going to move on.

So even though it's my position that that investigation is not confidential under any California law, it is your position that you will not be disclosing that, any information about whether you've conducted any testing yet on those containers?

1:06:12PM **A. That's correct.**

1:06:28PM MR. RIVAMONTE: And I raise the same objections as before.

MR. DUBIN: That's fine.

Q. (BY MR. CHARCHALIS:) And are any of those containers sourced from Vermont, to your knowledge, that you have?

1:06:40PM **A. I prefer not to answer that also. I can neither confirm or deny it was sourced from Vermont.**

Q. Okay --

A. And the one time I thought I answered a -- the question about some confidential material, then it was ruled that up opened the door.

1:06:53PM **So, you know, I don't have counsel here to advise me what I should or should not say.**

Q. Okay. And that's fine. I'm just going to ask a couple more questions just so the record's there, and then

1:07:16PM

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1:07:17PM I'm going to move on.

And so you won't, at this time, testify or provide information as to whether any of those containers that you have in your possession -- what retailers they're

1:07:29PM potentially from. Correct?

MR. RIVAMONTE: Same objection as before.

THE WITNESS: I have no idea what retailers they came from.

MR. CHARCHALIS: And I'll give you a running

1:07:40PM objection on this line of the questions.

Q. (BY MR. CHARCHALIS:) And you won't confirm where any of those containers that you received are sourced from. Correct?

Because I only asked you about Vermont, but you

1:07:52PM won't, in general, about where any --

A. I will give you one information. None of them have been sourced from this country.

Q. And you won't state whether any of them were sourced from China, one way or the other?

1:08:15PM **A. Do you have retailers in China that you represent?**

Q. Well, you've testified -- talc.

I'm saying that talc was sourced from, not the product was purchased in China. The talc in the Johnson's Baby Powder.

1:08:29PM **A. I think we're talking about --**

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1:08:31PM MR. RIVAMONTE: Same objections as before.
THE WITNESS: Yes.
It's a can't either confirm or deny that. We've turn over almost a hundred analysis [sic] of Chinese talc.
1:08:43PM Q. (BY MR. CHARCHALIS:) That's fine. I'm going to move on now. Thank you for bearing with me on that.
A. No problem.
Q. So this container of talc from Target that this friend of yours sent to you, that's the only container that
1:08:58PM was allegedly purchased from Target, correct, that you've tested?
A. Yeah, I think so. If there was any other ones, it would have been I purchased from Target, but I don't think I did.
1:09:10PM Q. Sorry. I don't think I heard the end of what you said. What was that?
A. It must be the only one.
Q. Okay.
A. I was looking for MAS's. I don't think MAS bought
1:09:24PM **any from Target.**
Q. And now going down to 36 and 37, that says: Kazan, off-the-shelf.
Is that a member of the Kazan law firm that purchased that and shipped it to you? Or was it one of
1:09:40PM Kazan's clients in a litigation that purchased it and sent

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1:09:45PM it to you?
A. I believe it was one of the attorneys. You would have to look at the chain of custody.
Q. Okay. Thank you. Almost through this.
1:10:06PM On this one, do you see a Table III?
No. 1, it says: Usually Walmart.
So that indicates that there is the potential that it was not purchased from Walmart. Correct?
A. Correct.
1:10:23PM Q. Okay. Since preparing this, you have obtained no additional information that would indicate that that was definitively from Walmart. Correct?
A. I have not received any information along these lines. That was client sample. So I don't know any more
1:10:45PM **details than what's written there.**
Q. And now this one's here in II -- I'm sorry. I'll go down to III where it says: Dollar General or Fred's Dollar or Walmart, you would agree that that means it was not definitively from Walmart; it could have been from any
1:11:03PM of those three stores. Correct?
A. Correct?
Q. And you don't have any information indicating whether it was more likely Walmart than those other two stores?
1:11:18PM **A. I do not.**

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1:11:18PM Q. In this Container No. 2, just to be clear, there as no asbestos identified in it, correct, where the retailer was Walmart?
A. That's correct.
1:11:30PM Q. And after reviewing this, I did not see any containers that were allegedly sourced from Safeway.
Is that your understanding as well?
A. Yes, sir.
Q. All right. Thank you.
1:11:50PM MR. CHARCHALIS: And I'm sorry, Mr. Court Reporter -- or Ian, you may know -- what exhibit are we up to?
MR. DUBIN: I think we were -- the next exhibit is 11.
1:12:49PM MR. CHARCHALIS: Okay. So I'll mark just the chart here, to the completion of it, as Exhibit 11.
And I will provide that to you, Mr. Court Reporter.
(Clarification by the court reporter.)
1:12:49PM MR. CHARCHALIS: All right. At the end of the deposition, we can just clarify -- you know, confirm what we have, and just put a clarification on the record. We don't need to take up Dr. Longo's time doing that.
Q. (BY MR. CHARCHALIS:) And you won't be providing
1:12:53PM any testimony about the chain of distribution for any of the

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1:12:56PM retailers. Correct?
A. That is correct. I will not.
Q. And you don't have any information about -- well, actually withdrawn.
1:13:05PM MR. CHARCHALIS: Let me just check my notes. I may be complete. All right. That's it for me.
Thank you very much for your time, Dr. Longo.
THE WITNESS: Thank you.
Anybody else?
1:13:31PM MR. DUBIN: No, I guess that's it.
THE WITNESS: Wow. It would be the first J & J deposition I ever been in that didn't go three days.
MR. DUBIN: That's what happens, when I take them.
THE WITNESS: Oh, you have a question?
1:13:42PM MR. DUBIN: No.
THE WITNESS: Okay. Got it.
(Exhibit No. 12 was marked for identification.)
VIDEOGRAPHER: The time is 12:14 p.m., Pacific Time, and we're off the record.
1:14:04PM This marks the end of Media V.
(Deposition concludes at 3:14 p.m., Eastern Standard Time.)
(Signature waived.)
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CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me via videoconferencing at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript was [ ] was not [ ] requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: March 6, 2023.

JOHN FAHRENWALD

CA CSR 14369

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